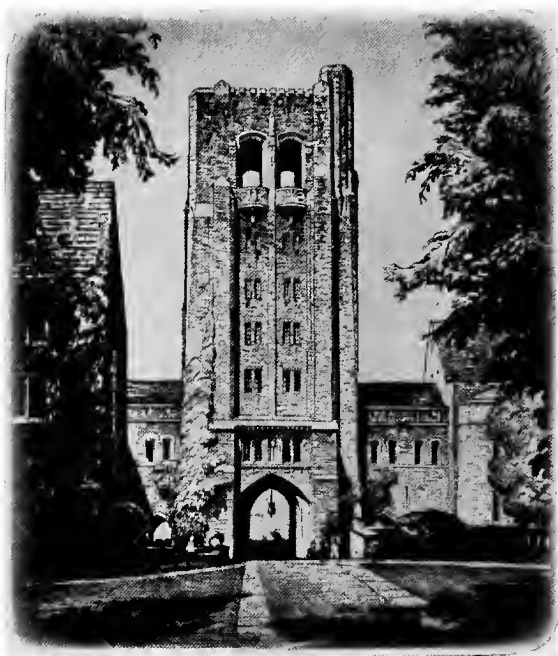




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THE
BENCH AND BAR

OF
SARATOGA COUNTY;


OR,
REMINISCENCES OF THE JUDICIARY,

AND
SCENES IN THE COURT ROOM,

From the Organization of the County to the present time.

BY E. R. MANN, ATTORNEY-AT-LAW.

BALLSTON, N. Y.:
WATERBURY & INMAN.
1876.



LAMH 30.

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TO

HON. GEORGE G. SCOTT,

THE SOLE SURVIVING JUDGE OF THE COURT OF COMMON PLEAS;

AND TO

HON. AUGUSTUS BOCKES,

THE FIRST JUDGE OF THE COUNTY COURT; GENTLEMEN WHO HAVE

WORN ITS ERMINE UNSULLIED, AND WHO HAVE REFLECTED

HONOR ON THEIR NATIVE COUNTY BY THEIR

INTEGRITY IN OFFICIAL STATIONS,

THIS RECORD OF THE

BENCH AND BAR OF SARATOGA COUNTY

IS RESPECTFULLY DEDICATED.

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PREFACE.

The courts of any country are the conservators of its liberties and of the rights of its citizens. The blessings that the people who inherit the privileges of *Magna Charta* enjoy are closely allied with the history of the civil and criminal tribunals of the mother country, and of our own land. The names of the eminent jurists whose sound decisions have commanded the respect and admiration of the world, and the brilliant advocates and wise counselors who have stood at the bar and defended the rights and liberties of citizens, are among the most illustrious on the pages of history.

The genius of Blackstone and the *dicta* of Mansfield and Sir Matthew Hale in England find their hemispheres, as it were, in the brilliant mind of Chancellor Kent and in the law as given from the lips of Marshall and Story. Those learned and eloquent lawyers of Great Britain, Burke, Sheridan, Canning, Curran and Brougham, have fitting compeers in Jay, Livingston, Henry, Webster and Choate, on this side of the Atlantic. From the many sons of this state who have worn the ermine with honor and integrity or gained countless laurels in the forum, Saratoga can point with pride to her sons on the honorable scroll. The county which has given from its bar to the bench of the state the names of Walworth, Cowen, Willard and Boeckes, and sent to the front rank of its legal talent such men as Nicholas Hill, jr., John H. Reynolds, William A. Beach and John K. Porter, and has lent to the councils of the state and nation the wisdom of Gen. James Gordon, Judge John Thompson, John W. Taylor, Col. Samuel Young, John Cramer, George G. Scott and James B. McKean, and whose bar roll now bears the names of men who have won distinction by hard work in the profession they adorn, should well be proud of their record, and be unwilling to allow the story of their struggles and triumphs to pass to the shades of mere tradition. Several

gentlemen have in the order of seniority at its bar been its patriarchs, and, since the death of the venerable Wm. L. F. Warren in 1875, that dignity has been worthily won by John Brotherson of Ballston Spa.

With a view of collecting the judicial history of this county with reminiscences of the chief actors therein, as it exists in the records of the county clerk's and sheriff's offices or in the memories of old residents in this village and other parts of the county, I have been for several years collecting and collating the facts which appear in the following pages. The traditions of the early days have been thoroughly compared with each other and with the records of the county and duly collated. From these materials have been drawn the threads which have been carefully woven into the history of our county's "Bench and Bar." The dates, in every instance, of events connected with the history of the county and its courts are those found in the official records.

The "Life Sketches" were written from data furnished by the friends of the distinguished gentlemen therein portrayed, and the anecdotes related are given as they were told to me by parties to whom they are as familiar as "household words," and, as they give an inkling to the humorous side of the sometimes dry subject of the law, they find an appropriate place in this work.

I must also render acknowledgement to Judge Scott and Gen. E. F. Bullard for facts derived from their "Centennial Addresses," and to Wm. L. Stone for several extracts from the "Reminiscences of Saratoga." Also, to Judge Scott for the excellent "Civil Register" prepared by him several years ago for the use of the supervisors, which is included in this work as an appendix, and which has been completed to the present year by comparison with the county records. Also, to all other kind friends who have assisted in the compilation and publication of this work.

E. R. MANN.

Ballston Spa, September 25, 1876.

THE BENCH AND BAR

OF SARATOGA COUNTY.

CHAPTER I.

THE FIRST COURTS OF THIS COUNTY.

It has been a matter of chronic complaint for several years that the members of the legislature, when they wish to carry some far-reaching measure and give no occasion for distrust arising from seeing the title in the daily newspapers, that they couch its nomenclature in such obscure terms that the common reader will not guess its tendency and scope. That this is no new practice is shown by "Chapter IV of the Laws of 1791, passed February 17," of that year. It was the "property" of Gens. Philip Schuyler and James Gordon, and was entitled "An act for apportioning the representation in the legislature according to the rules prescribed in the constitution, and for other purposes." It passed both houses, was signed by Gov. George Clinton, and behold, Albany was bereft of a large portion of her northern and eastern territory, and two sister counties confronted her across the Hudson and Mohawk rivers. By section one of that act, after annexing the towns of Easton and Cam-

bridge to Washington county and creating the county of Rensselaer, it was provided: "that all that part of the county of Albany which is bounded easterly by the Hudson river and counties of Washington and Rensselaer, southerly by the most northerly sprout of said river and the town of Schenectady, westerly by the county of Montgomery, and northerly by the county of Washington, shall be one separate and distinct county and be called and known by the name of Saratoga." The other sections of the bill stated that the several courts of the state should have jurisdiction therein; provided for local tribunals; that all prisoners should be kept in the Albany jail until new jails should be built; and for their representation in both houses of the legislature. Thus in the last section alone was treated the subject matter of the title.

The courts of the state at that time were by the constitution of 1777, the "Court of Errors," which consisted of the lieutenant governor, the senators, chancellor and the judges of the Supreme Court, which had jurisdiction of impeachments and a general revision of the decisions of the courts below, by appeal; the "Court of Chancery," having the exclusive control of all cases in equity; the "Supreme Court of Judicature," which consisted of a chief justice and three *puisne* judges, which sat *in bank* and heard appeals from the lower courts; the "Circuit court," held in different counties at least once in each year, presided over by a judge of the Supreme Court, and empowered to try all issues at law and give judgment thereon; and in

each county a "Court of Common Pleas," consisting of a first judge and at least three judges, which had power to try and determine according to law all actions real, personal and mixed, arising in the respective counties. The criminal branch of the courts consisted of an "Oyer and Terminer," held by a judge and at least three commissioned justices of the peace of the county, of whom one might be the first judge, or one of the judges of Common Pleas, and a "Court of General Sessions," held by any three of the justices of the peace of the county and of which a judge of Common Pleas must always be a member. The former had jurisdiction of all crimes, treasons and felonies, and the latter was confined to the trial of such offenses within their counties, and misdemeanors, with powers in each court according to law. The Court of Sessions had jurisdiction also of all cases relating to slaves, servants and apprentices.

Attorneys of the degree of counselors could practice in any court of the state. Attorneys of the Supreme Court could appear in that court and try cases in the Circuit and Oyer and Terminer. But to practice in the Courts of Common Pleas or General Sessions it was first necessary to be specially admitted to practice in those counties in which it was held. To secure admission to the degree of attorney it was necessary to show a certificate of admission to the Supreme Court or a certificate of a three years' clerkship with some attorney, and undergo a rigid examination. The state was represented then as now in the courts by an attorney-general,

and the people in the Oyer and Terminer or Sessions by the attorney-general or district attorney. All of these officers were appointed by the "Council of Appointment, and commissioned by the governor. The judges held their office until they attained the age of sixty years. Such was the cumbrous machinery of our judiciary, founded on that of England, at the time our county's history begins. The common law, when not conflicting with a statute, was the law of the state.

The new county was at once placed on a firm judicial footing. Gov. Clinton immediately appointed John Thompson of Stillwater, first judge: James Gordon and Beriah Palmer of Ballston, Jacobus Van Schoonhoven of Halfmoon, and Sidney Berry of Saratoga, judges. Sidney Berry was appointed surrogate, Jacob Fort jr. of Halfmoon, sheriff, and Dirck Swart of Stillwater, clerk. In accordance with an appointment made under the provisions of the statute the first session of the court of Common Pleas met May 10, 1791, at the residence of Samuel Clark, justice of the peace, in Stillwater, now Malta; it having stood on the farm now owned by Henry Van Hyning, on the East Line road. It was presided over by Judge Thompson and the three judges above named, with John Varnam, Eliphalet Kellogg and Epenetus White, associate justices.

The first business recorded is the admission to practice of Cornelius Vandenburg, Guert Van Schoonhoven, Peter Ed. Elmendorf, Myndert Van Everen jr., John V. Henry, John D. Dickinson,

Gamaliel and Harmonis H. Wendall, John W. Yates, Nicholas Fonda, Abraham Hun, Peter D. Van Dyck, John Woodworth, Moss Kent, John Lovett and Joseph C. Yates (afterwards governor), as attorneys. Major Ezra Buell of Stillwater, a revolutionary veteran, was appointed crier. The first recorded order in the court of Common Pleas was directed to Michael Sharp in the action of Gurtie Thompson, Rikert Shell and Harmonis Thompson, executors of Jacob Thompson, to show cause why judgment should not be entered against him at the next term on a bill penal executed by him May 6, 1770, for £10, 10s. Guert Van Schoonhoven was plaintiffs' attorney. No statute of limitations seems to have held then, and counselor Van Schoonhoven seems to have been successful in collecting this long standing account, for no further notice of it appears. At the May term in 1792, Henry Yates was admitted to practice after examination, and James Emott and Henry Walton were admitted on exhibition of certificates from the Supreme Court.

At the first term of the General Sessions, held May 10, 1791, by James Gordon, judge, and John Varnam, Epenetus White, Eliphalet Kellogg, Richard Davis jr., Douw I. Fonda, Elias Palmer, Nath. Douglas, John Ball and John Bradstreet, justices of the peace, a grand jury was sworn, consisting of Richard Davis jr., Joshua Taylor, John Donald, Henry Davis, Hez. Ketchum, Seth C. Baldwin, Ezra Hallibort, John Wood, Samuel Wood, Edy Baker, Elisha Andrews, Gideon Moore, Abraham

Livingston and John Bleecker. The first trial in the Sessions was at the November term, 1792, being the indictment against one Daniel Hults for assault and battery on Burtis Soper. The affray occurred in Stillwater. Five witnesses were sworn for the people and four for the defendant. As the law then did not act on the principle that the quality of justice and mercy should be *strained*, the defendant was not allowed to testify, an equilibrium of evidence numerically could not be established, and a conviction was had. He was fined ten shillings. The people, it appears, were not more given to mending their ways then, than in these later days, for indictments were found against the towns of Ballston and Halfmoon for failure to keep highways in proper repair. The offense laid at the door of the highway officials of Ballston was that they failed to maintain a passable highway at all seasons of the year from Academy Hill across the outlet of Ballston lake to the residences of Judges Kellogg and White on the eastern shore. In the early spring of 1791, Gen. Gordon had been to Albany, accompanied by his family, and on his way home he drove up in his carriage on the east side of the lake to Judge Kellogg's, and then essayed to cross the outlet bridge. The water was very high and extended over and across the road. He drove cautiously across the bridge and reached the narrow "corduroy." The water was so high that it came into the carriage and rendered it impossible to proceed. It was with the greatest difficulty that Gen. Gordon turned his team and got back in safety to his friend Judge

Kellogg's hospitable mansion, where the party remained until morning. The indictment seems to have been ineffectual, for the same dangerous "corduroy" yet exists, or one of its posterity made after the original pattern, for, by a singular coincidence, a few days after this chapter was originally written, in the spring of 1876, Col. C. T. Peek and family had a similar narrow escape with their lives while attempting to pass across the outlet to attend church at Ballston Center. That half mile of most execrable highway is a bitter disgrace to the prosperous town of Ballston.

Ithamar Smith of Ballston and William Palmer-ton of Stillwater were tried for assaulting constables in the performance of their duty. They were convicted and fined; Smith one pound and Palmerton five pounds. It is easy to imagine the language of stern rebuke of the enormity of these offenses with which the presiding judge addressed the culprits.

The first Circuit Court and Oyer and Terminer was held at the house of Jedediah Rogers, in Half-moon (now Clifton Park village), Tuesday, July 7, 1791. It was presided over by Chief-justice Robert Yates, assisted by all the judges of Common Pleas and Adrian Hagerman and Epenetus White, justices of the peace. The next term was held in the church at Stillwater, June 4, 1792. No business of importance was transacted at either term. The first petit jury that was impaneled was in the court of Common Pleas, to try the issue in the suit of Daniel Ketchum, Taylor, against Daniel Ketchum for damages for trespass, assault and false impris-

onment. The jury consisted of Thomas Sweetman, foreman ; William Carpenter, Jeremiah Betts, John Rowley, Seth Rogers, Jacob Rogers, Ephraim Woodworth jr., William Patrick, Samuel Bushie, Hobson Beely, John Andrews jr. and Joseph Benjamin. They had no difficulty in disposing of the case and gave a verdict to soothe the injured feelings of the plaintiff for fifteen shillings and costs. C. Vandenburg was the successful attorney.

At the June Sessions, 1794, a case arose which demonstrated that justices of the peace are sometimes of a belligerent temperament, for John Bradstreet Schuyler was indicted for an assault and battery on Seth C. Baldwin, and Seth C. Baldwin was also indicted for an assault and battery on John B. Schuyler "at this present term of court." At the next term the parties "having adjusted their differences," *nolle prosequies* were entered. Whether they settled them in another and more private game of fisticuffs or over a "cup of sack," honest old clerk Swart did not record, nor does tradition whisper. At the same term, Dick, a negro slave, was tried for an assault and battery on Keziah Millard, wife of his master, Edy Millard, and found not guilty ; thus showing that in those primitive days the colored man had rights in this county which the "white man were bound to respect."

The third Circuit and Oyer was held in the Presbyterian church in Ballston. Chief-justice Yates presiding, July 9, 1793. Elizabeth Scribner was tried on an indictment for the murder of her child. C. Vandenburg represented the attorney-general,

and Peter W. Yates and G. Van Schoonhoven conducted the case of the prisoner. Fifteen jurors were challenged before the "twelve good and lawful men" were found who adjudged her not guilty on the evidence. At the same term Ithamar Allen was tried for counterfeiting a Spanish milled dollar. A verdict of "not guilty and he did not fly the county," was rendered by the jury.

At a term of Oyer and Terminer held in the "red church in Ballston," August 17, 1795, before Chief-justice Yates, Hannah, a negro woman, was convicted of grand larceny on a plea of guilty, and was sentenced to be whipped at the public whipping post with fifteen stripes on her naked back, August 20, between the hours of one and two o'clock in the afternoon. This proves that the privileges now only enjoyed by Delaware were once in vogue in this latitude. The last entry in this term is the following :

Elias Palmer and William Bradshaw, substantial freeholders of Saratoga county, returned into court with an inquisition taken on the body of an unknown man who came to his death by a wound on the back of his head at the hands of a person or persons unknown.

There is no further record of this mystery, and we can only conclude that his blood, like that of righteous Abel, "yet crieth from the ground," and that his soul joined

"The innumerable caravan
That journeys to the pale realms of shade."

This term was the last held previous to the completion of the first court house, which was located

at Court House Hill, now a hamlet in the town of Ballston, two and a half miles southwest of the county seat. In addition to the names of the attorneys practicing at the bar of the several courts, some of whom were among the most distinguished counselors of the day, may be mentioned William P. Van Ness, James Kent and Brockholst Livingston, whose names appear in connection with several causes tried. Hon. Geo. G. Scott also informs me that his father, James Scott, told him that at one of the circuits held at the church at Ballston Centre, Alexander Hamilton and Aaron Burr were opposing counsel in an action there tried.

CHAPTER II.

THE COURT HOUSE AT COURT HOUSE HILL.

"The evil that men do lives after them ;

The good is oft interred with their bones."

These words, which the Bard of Avon places in the mouth of Antony in his eulogy pronounced over the dead body of Julius Cæsar, are a verity that has been proven in numerous instances. A petty quarrel has often led to dire consequences, as was demonstrated in the case of the man in Rhode Island who killed a trespassing pig belonging to a neighbor, and the feud thus engendered led to circumstances which resulted in the election of a congressman by whose decisive vote the war of 1812 was declared to exist by the resolution of congress. Previous to 1790 there had lived in the town of Ballston for several years two men who had become quite prominent among the early settlers. They were Gen. James Gordon, a native of the north of Ireland, but of Scottish descent, a colonel in the army of the revolution, who was taken a prisoner in his own house during the tory raid in 1780, and was held as a prisoner several years in Canada ; and Judge Beriah Palmer, a native of Connecticut, a man who, it would seem, was endowed with all the talents usually possessed by the sons of that enterprising commonwealth. Gordon then lived on the farm now owned by Henry Wiswall jr., on

the middle line road, and Palmer lived near Burnt Hills, on the farm now owned by Hon. Samuel W. Buel. The town of Ballston then included all the western and northern portions of what is Saratoga county. For several years previous to 1790 Gordon had been its supervisor. The election for that spring was called to be held *in* the meeting house at what is now known as Milton hill. The day was bright and balmy and it was suggested that the election be held *outside* the church, and one of the justices taking a suitable position, declared the polls open. The votes were taken *viva voce*, and Palmer, who was a candidate, soon found that the assemblage was quite adverse to his claims. So taking one of the justices, friendly to him, he went *into* the church and opened another poll, where thirteen citizens asserted their preferences and Palmer was declared unanimously elected. A contest arose, and though Gordon received the largest number of votes *outside* the church, Palmer's election was affirmed because he had the *inside* of the church and the argument in his favor. Gordon acquiesced in this decision, but his wily Scotch blood was excited, and five years later he aided in turning the tables on Palmer. The feud thus created led to an appeal to the courts. Gordon secured a verdict stamping certain allegations proved to have been set afloat by Palmer to have been libelous, and Palmer obtained Gordon's indictment for assuming to act in the capacity of a judge of Common Pleas without taking the constitutional oath. He had held that office in Albany county,

and supposed that the erection of the new county transferred him to its bench. The indictment was, however, soon afterwards quashed. Both, it would appear, were highly esteemed by the community, for both sat as judges in the county courts and each served two terms in the national house of representatives. Palmer survived his opponent and as Surrogate probated his will. Gordon sleeps the last sleep in the Briggs cemetery in Ballston, and Palmer lies in the cemetery at Ballston Spa.

We have seen in the preceding chapter that there was no settled place of holding the courts, the shire town or public buildings not having been located until four years later. At that time the most important place in the county was Half Moon Point (now Waterford), but its location was out of the question. Next came Stillwater village, the residence of Judge Thompson and county clerk Swart. But the same objection existed as to that and Schuylerville (the home of John Bradstreet Schuyler, a son of the patriot general), as there did to Waterford. Next came Ballston (meaning the Centre), which was then an important place of trade for the northern country, having two hotels and offering many and strong inducements to have it made the county seat. It numbered among its advocates Judges Beriah Palmer and Epenetus White, Henry Walton and Seth C. Baldwin, who were among the most influential men of the time. An act was passed by the legislature March 26, 1794, naming John Bradstreet Schuyler, Richard Davis jr., James Emott, John Ball and John McClelland

commissioners for locating the county seat and building the court house and jail. James Emott was a son-in-law of Beriah Palmer, and was favorable to locating it at the Centre, which was to the citizens of the town what Boston is to the sons of the old Bay state. Ball was the son of Rev. Eliphallet Ball, and brother-in-law of Gen. Gordon, and lived then at Gordon's mills, now Milton Centre. He too, was supposed to be favorable to the same location. Mr. Davis lived in Half Moon and Mr. McClelland lived in Galway.

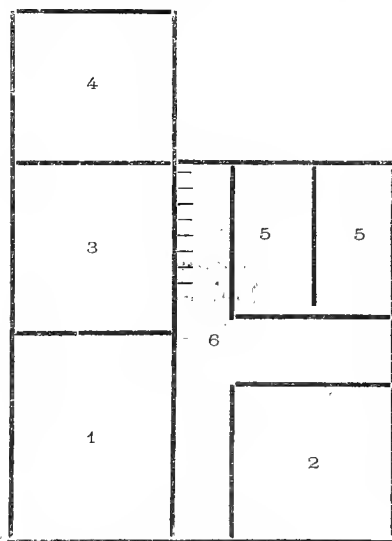
Now came the question of location. The town of Milton had been set off from Ballston in 1792, and Col. John Ball had been its first supervisor. A fine and thriving settlement had sprung up around the church on the hill, and like most new and enterprising embryo cities it affected to despise its staid old neighbor on the south as rather too old foggyish. The forty-third parallel (which is the dividing line between Ballston and Milton) soon became as noted a point of divergence of common interests as did the Tweed of old in dividing the Scot from his Saxon foe, or as in later days did Mason and Dixon's line mark the opposing currents of free and slave labor. Of course, Milton put in its claims for the location of the public buildings and its designation as the shire town. Its claims were presented to the commission by Col. John Ball, to the disgust of his old Ballston friends. He was backed by supervisor Abel Whalen, Elisha Powell and Dr. Aaron Gregory, a son-in-law of Judge Thompson. The latter and Gen. Gordon, it is alleged, secretly aided Col. Ball in his endeavors. Ballston Spa and Saratoga

Springs were then unknown, and of course were not contestants for the honors about to be conferred. The commission deliberated long the mooted question; the decision wavered, and finally seemed to be decided in favor of the southerners. John B. Schuyler, who remembered his late encounter with Seth C. Baldwin, still stood firm with Col. Ball against the designation of Baldwin's home as the county seat. At this juncture Capt. Edward A. Watrous, who lived on the hill north of Gen. Gordon, offered as a compromise to give to the county a site on his farm to be public property as long as occupied by the court house and jail which he proposed should be located thereon. This proposition undoubtedly had its origin in the mind of Gen. Gordon. The offer was accepted by the commission, Ballston was declared the shire town, but Gordon enjoyed the discomfiture of his old antagonist, Palmer.

The site having been decided, the commissioners began to perfect. £1,500 New York currency had been appropriated for the purpose of erecting a suitable building or buildings for the court house and jail. There was no provision for the county clerk's office, and the same was kept by the clerk in his own office, wherever it might be located, until 1824, when the little stone edifice, so familiarly known in Ballston Spa, was built. A contract was made with one Luther Leet to erect the building according to the plans agreed upon. It was to be of wood, two stories in height, fifty feet square, with a one-story wing upon the rear twenty by thirty

feet. For the accompanying diagrams of the building and the court room I am indebted to Hon. Geo. G. Scott.

Like some modern commissioners and contract-



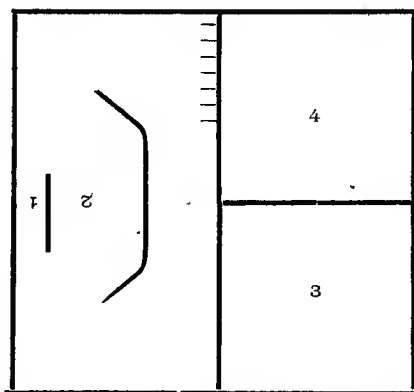
PRINCIPAL FLOOR.

1, Barroom. 2, Debtors' Room. 3, Jailor's Private Room 4, Kitchen and Dining Room. 5, 5, Cells. 6, Corridors.

ors, the commissioners found the sum first appropriated was insufficient, and £600 had to be further raised for the purpose of completion in each of the two succeeding years. The court house thus cost the then enormous sum of \$6,750. The timber for the building was furnished by Edmund Jennings,

father of the venerable ex-sheriff Joseph Jennings, who yet distinctly remembers its erection.

The court house having been completed, the May term of the Common Pleas and Court of Sessions for 1796 was held therein. John Thompson, first judge; and judges Sidney Berry and Epenetus White, with associate justice Eliphalet Kellogg, sat on the bench in the former; and judges Gordon



COURT ROOM FLOOR.

1, Bench. 2, Bar. 3, Sheriff's Room. 4, Jurors' Room.

and White, and justices Van Schoonhoven, Kellogg and John Ball held the scales of justice in the latter. In the Common Pleas, on due proof of residence and on taking the prescribed oaths, John Franklin, an alien, was admitted to citizenship. The first case tried with a jury within its walls was a declaration *in assumpsit* by one James S. Smith against James Reynolds. The chosen twelve were,

William Reeves, foreman ; Noah Taylor, Henry Dunn, Hez. Vanderwerker, John Hoyt, Joseph Rogers, Thos. Ostrander, Stephen Benedict, Aaron Wilson, John Pettit, Chas. Deake jr. and Mark A. Childs. It is recorded "that without leaving their seats the jury rendered a verdict for the plaintiff for £10,10s., and six cents costs." If, as in modern times, the successful attorney received the costs for his fees, Mr. Guert Van Schoonhoven must have felt liberally rewarded for his forensic efforts in behalf of Mr. Smith. For several years the principal business in the Common Pleas related to petitions from imprisoned debtors to be released from durance vile ; for it must be remembered that in those days the "glorious privilege of imprisonment for debt" was a feature of our laws and was cherished by creditors as one of the rights secured by *Magna Charta*. That it was not appreciated by the debtor class is shown by the numerous petitions filed by them in Common Pleas. The court was otherwise occupied extensively in settling partitions of lots of the allotments of the Kayaderosseras patent. In 1805 the Court of Common Pleas employed James Scott to survey the jail liberties, which "contained three acres, exclusive of the lands on which the court house stands, and takes in the greatest part of the buildings on the hill." As debtors "on the limits" could only leave the same on Sunday without liability of re-arrest by their bailors or creditors, it limited their circle of acquaintances to a very exclusive "set." However, in 1811, this was so far modified as to allow them "to walk in the highway

to and from the Spring in the village of Ballston Spa."

Judge John Thompson, having reached the age of sixty in 1809, the constitution rendered him ineligible for further service. Salmon Child of Greenfield was appointed first judge by Gov. Tompkins. He held office until 1818. The following gentlemen sat on the bench with him as judges during his term of office, viz: Beriah Palmer, Samuel Clark, Adam Comstock, John Taylor, Nathaniel Ketchum, John McClelland, John Stearns, William Stilwell, Benj. Cowles, Samuel Drake, Ashbel Andrews, William Patrick jr., Elisha Powell, Ziba Taylor, John M. Berry, Abner Carpenter, Abraham Moe, Thomas Laing, Avery Starkweather, Jeremy Rockwell, Thomas Dibble and Herman Ganzevoort. Until 1818 there was no limit to the number of judges. The legislature that year limited the number to a first judge and four associate judges. The last entry in Common Pleas held in the old court house was the report of Onesimus Hubbell, James Scott and Jeremiah Mann in the partition suit of Martin Goodrich *et. al.* against Lewis Goodrich, filed January 30, 1816. The following attorneys were admitted to practice in Common Pleas at Court House Hill, viz: Daniel L. Van Antwerp, James Thompson, Jonathan T. Haight, Zebulon R. Shipherd, Samuel Cook, Nicholas B. Doe, Samuel Young, George Palmer, William Ganzevoort, Essek Cowen, Daniel G. Guernsey, Samuel A. Foote and John L. Viele.

In the Court of Sessions, April term, 1798, there

was tried an indictment which shows that the beef market was at a low ebb, for a good milch cow was valued at only \$12.50. Abel Buck having been indicted for stealing such a cow from James Green at Ballston Centre, he was on proof of her value, conviction of petit larceny and sentenced to hard labor in the county jail for two months. So far as is known by the records he was jailor Gregory's first boarder. At the January term of the Court of Sessions in 1800, the first indictment for perjury was tried against one Amasa Parker, of Milton. Josiah Ogden Hoffman, attorney general appeared for the people and Guert Van Schoonhoven for the prisoner. The alleged perjury was said to have been committed at the preceding term of Common Pleas. The judges who had heard the testimony gave conflicting accounts of his evidence as they understood it, and the jury gave Parker the "benefit of the doubt."

The spirit of improvement was abroad about the year 1800, and, as ever, it was opposed by conflicting private interests. Numerous mill owners in all parts of the county were indicted for maintaining nuisances. The thing complained of being the dams which held back the waters to the alleged great increase of fever and the detriment of the public health. Noticable among these was one against Joshua B. Aldridge of Ballston Spa, on complaint of Stephen H. White, for stopping the flow of water in Gordon's creek by his saw mill dam. In this case, as in nearly all others at the time, an order for the razing of the dam was entered in the minutes of the court.

At the October term, 1801, an indictment was found against Abraham LaDieu of Northumberland and his wife Abigail, for arson. They were tried in the next Oyer and acquitted. At the same Court of Sessions John Robinson pleaded guilty to stealing £10 from Gilbert Laing and was sentenced to state prison for one year and one month. George Green for beating his wife Peggy was sentenced January 12, 1804, to "two weeks in the county goal on bread and water." At the November term, 1805, Grandus Van Schoonhoven and Samuel Demarest were each fined five dollars for keeping gambling tables in their taverns; and Jacob S. Viele, a town collector of taxes, was found guilty on three indictments for extortion and fined \$105.

At the April term, 1806, "Justices Jacobus Van Schoonhoven, Beriah Palmer, Samuel Clark, and Epenetus White (who were to have held the Sessions), found that they had not been named in the general commission of the peace as justices (they being judges of Common Pleas) after serious consultation, and taking the advice of the bar, declared that they were not legally qualified to hold said term, and the court was adjourned by one of the justices of the peace who was present at the last term until the first Tuesday in November next, and the clerk was directed to enter the same on the minutes." The entry shows a becoming distrust of doubtful powers by the gentleman named therein, and sets a worthy example for all judges to follow when their authority to act might be questioned.

The first "equine" mistake of ownership of property recorded was the stealing of a bay gelding from Eleazer Wheelock by one James Jones, *alias* Paul P. Jones, *alias* James Johns. This much named individual was arrested *flagrante delictu*. He was indicted and tried at the January Sessions, 1807, and was convicted and remanded for sentence. I find but one other mention of his name. The next day the grand jury came into court with an indictment charging James Jones *alias*, etc., Silas Deuel, John Scheator and Leonard Barnes, *alias* John Robinson, with jail breaking. They had in fact taken French leave of jailor Hollister the night previous. Similar escapes ensued and similar indictments followed. Deuel was the only one of the "special jail delivery" who was recaptured. He was bailed and again fled the country. By an act of the legislature of 1814 it was ordered that judges of Common Pleas should thereafter hold the General Sessions. The last trial in this court house was that of John Hart, jr. and George Billings, indicted for fraud and deceit. They were found to be not guilty. Billings was remanded to jail on another similar indictment for trial at the next Oyer and Terminer. Before the appointed day he had gone to meet his final judgment, having been burned in the destruction of the jail, March 24, 1816.

The first Circuit Court and Oyer and Terminer held in the court house at Court House Hill was held in 1799, and was presided over by Judge John Lansing, afterwards the chancellor whose sudden

disappearance a few years later yet remains one of the mysteries of the present century. The other terms there held were holden by Judge Kent, afterwards the famous chancellor, Judge Jacob Radcliff, Chief Justice Morgan Lewis, Chief Justice Smith Thompson, Chief Justice Ambrose Spencer, Judge William W. Van Ness, and Judge Jonas Platt, who held the last term in it in May, 1815. At the June Oyer, 1801, Jacobus Wheeler, convicted for burglary, was sentenced to state prison for life by Judge Kent. I find the following entry in the Oyer minutes, June, 1804, in the trial of Isaac French for grand larceny: "Mr. D. L. Van Antwerp was assigned by the court as counsel for the prisoner, in conformity with the humane practice of our laws." However he was convicted and Judge Smith Thompson sentenced him to three years' imprisonment. At the June term, 1805, Margaret Curtis plead guilty to an attempt to poison Esther Foote, an infant of three years. Judge Spencer gave her sentence to be confined in "the county gaol for the space of one whole year." At the June Oyer, 1806, it is recorded that one David Wheeler had "grasped at time and caught" —not eternity, but one year in state prison for stealing a watch of the value of \$12.50. At the June Oyer, 1808, John Martin and Patrick Freeman, for passing counterfeit money, were sent to states prison for life by Judge Smith Thompson. This conviction and sentence, and the indictment of Mott Vandenburg and the members of his gang the next year had a wholesome effect, for the

“bank” was scattered, Vandenburg fled to Canada, and for a time common people had confidence in their currency. William House and George Burnoits received life sentences for burglary at the same term.

At the May Oyer, 1810, Russell Hibbard was convicted of an attempt to poison the family of Garrett A. Van Vranken. George Metcalf represented the people and Young and Van Antwerp the prisoner. Judge Van Ness sentenced him to “close confinement in the county jail for one year, to pay a fine of \$50 and enter a security with two good sureties for \$300 to keep the peace in future.”

At the May Oyer, 1811, Judge Spencer gravely sentenced John Robertson, convicted of assault and battery on his step-mother, “to be confined in the county jail for three months, and until you find securities for your good behavior, particularly towards your father’s family and especially towards your step-mother in the sum of \$1000 ; your securities being two freeholders in the sum of \$500 each.” How long he remained in the custody of jailor Kellogg, county clerk Baldwin failed to note. At the same term Joseph Rhodes, who was convicted of burglary, was sentenced for a life term, notwithstanding he asserted his innocence after conviction. Whether circumstances proved his innocence afterwards, whether he suffered wrongfully a long life of ignominious servitude, or was a hardened villain, there is no scrap on which to base a conjecture.

By the year 1813 counterfeiters were again boldly at work. A large haul having been made by

the detectives in those days, a special Oyer was held in August of that year and nine indictments were disposed of. One of the parties gave evidence against the others and eight were convicted receiving sentence from seven to twenty-one years; Thomas H. Pratt, the leader, having the heaviest term imposed on him. Jail breaking had been for some years a common amusement, and at last, in the May Oyer, 1815, Nathaniel Green, who had been detected in leaving surreptitiously by jailor Taylor, was sentenced to "five year's imprisonment in the state prison in the city of New York." This was the last conviction had in the old Court House. The other offences for which indictments were framed, but on which no recorded convictions were had, were for blasphemy, being a common cheat, illegally transporting paupers from one town to another, polygamy (this was the case of one Henry Young, an alleged antetype of Brigham), dissecting the dead, and attempting to enslave a freeman.

In addition to the other distinguished counselors mentioned as having stood within its bar at the practice of their professions may be named Ambrose Spencer, John Woodworth, Matthias B. Hildreth, Ebenezer Foote, Abraham Van Vechten, Thomas Addis Emmet, Martin Van Buren, Daniel Cady and Richard M. Livingston. So far as I am able to learn there is but one surviving lawyer who was admitted to practice within its forum, viz: the venerable Samuel A. Foote of Geneva. He studied law with Judge James Thompson and boarded with a Mr. Dibble, who lived where Hiram Wood

now resides. He resided with his brother Ebenezer Foote, in 1815, in the city of Albany, and his name appears in our Common Pleas minutes at the July term of that year as having been admitted to practice therein. In 1851 Judge Foote sat in the Court of Appeals. He is now (April, 1876,) about eighty-five years of age, and recently argued a case before the Court of Appeals.

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CHAPTER III.

THE BURNING OF THE COURT HOUSE.

In the last chapter the erection of the Court House on Court House Hill was described. Its location was admirably suited in some respects. It stood on the crown of an eminence and its cupola, it is said by old residents could be seen at that date from every town, then created, in the county. It was situated opposite the present residence of Sanford A. Pierson. During its existence Douw I. Fonda of Stillwater, Henry Davis of Halfmoon, Seth C. Baldwin of Ballston, Daniel Bull of Saratoga, Asahel Porter of Greenfield, Nathaniel Ketchum of Stillwater, Hezekiah Ketchum of Halfmoon, and James Brisbin, jr. of Saratoga held the important office of sheriff. The prisoners (eight in number) who had been kept at the expense of the county in the Albany jail were brought to the cells in the new jail March 23, 1796 by sheriff Fonda. Enos Gregory, Joseph Palmer, Samuel Hollister, Jonathan Kellogg and Raymond Taylor were successively placed in charge of it by the sheriff, in the capacity of jailors. During the period the courts were held within its walls Dirck Swart of Stillwater, Seth C. Baldwin of Ballston, Levi H. Palmer of Milton and William Stilwell of the same town were clerks of the county and *ex-officio* clerks

of the several courts.

Around the court house a thriving village was growing and doubtless the owners of the surrounding farms discussed the probable value of "corner lots;" and saw in imagination their pastures and corn fields bisected with avenues and streets. And without doubt there were others who saw with an air of dismay the ruin of their sylvan homes beneath the crushing weight of taxation for local improvements. Several stores and two hotels were erected and did a "land office business" in court terms. Two lawyers, Messrs. John W. Taylor and Samuel Cook early displayed their "shingles" there, trusting in the maxim to secure the "worm." But suddenly a blight came over this rural Arcadia and its hopes were forever blasted. To-day the site of the court house is as undistinguishable from the surrounding clods as were the ruins of Pompeii for seventeen centuries. Let the following from the *Independent American*, published in Ballston Spa, March 27, 1816, tell the disastrous and tragic fate of the court house and one of its unfortunate inmates:

"On Sunday morning last at one o'clock a fire broke out in the northwest corner of the court house in the town of Ballston which had so progressed before it was discovered that all attempts at quelling it proved abortive. The air was very still, otherwise the contiguous buildings must have shared the same fate. One of the prisoners named George Billings, who was chained to the floor, was unfortunately consumed. Four prisoners, Shearer, Davis (colored,) Cole and Drapoo made their escape. Two of them have since been retaken, to wit: Shearer and Davis. A court of enquiry was instituted in this village on Monday, and from their ex-

amination on the subject of the fire did not hesitate to give it as their opinion that the fire was communicated to the building by one or more of the prisoners."

This was all that editor Comstock devoted space to in his account of the thrilling tragedy. He was too much occupied with federal politics and speculations on the probable outgrowth of the recent Napoleonic wars in Europe to waste his time in home events. Consequently local items were usually as scarce in the *Independent American* as "angel's visits."

From conversations had with several old residents and particularly with the venerable Mrs. Sarah A. Boss, then Miss Sarah A. Rogers, daughter of the founder and first rector of Christ church, Ballston, I am able to give the following account of the conflagration. Raymond Taylor, the jailor, it would appear was a man after the manner of William the Testy, described in Knickerbacker's quaint "History of the New Netherlands." He was a man who loved the almighty dollar and turned a nimble penny into dimes by keeping ardent liquors to regale the drooping spirits of his legal friends, as well as the passing traveler. He felt all the dignity attached to his office and woe to the unlucky wight placed in his care if he by chance gave vent to an unlucky word. Poor Billings had incurred his displeasure, and on the day before the final tragedy he had been securely chained to the floor by a large ox chain riveted around his body with the ends united around one of the floor sills by a rivet. By the direction of the sheriff, it was unlawful to fur-

nish lights to the prisoners. But Taylor saw how he could do a retail chandler's business, so he sold candles to one Fones Cole of Northampton, confined on a charge of forgery, to enable him to play cards with Drapoo. They were in the south cell with Shearer, and Billings and Davis had the north cell. In addition to them there were three debtors confined in the debtor's room. These with one Joseph Mulliken, a debtor "on the limits," Taylor and his wife and the latter's mother were the inmates of the building on the fatal night.

Cole and Drapoo, who had found their confinement irksome, set fire to the wall of their cell to burn their way out. They finally gave the alarm of "fire," but Taylor, who slept in the southwest part of the building did not hear the sound. Mulliken, who slept in the jury room above, was awakened by the smoke and alarmed the neighborhood. It was first heard by Mrs. Boss and Mrs. Elizabeth McMaster, mother of the late Robert P. McMaster, who were watching by the bedside of Mrs. Sarah Watrous, who then lived in the house now owned by Alonzo B. Comstock. They awoke the family, and Thomas Burritt, (father of Mrs. A. J. Grippen of Ballston Spa) an employee of Mr. Watrous, who bethought himself of the condition of Billings, ran to Philo Hurd's blacksmith shop and with his herculean strength carried the ponderous anvil and a sledge to the jail. He and Ezekiel Horton (father of county clerk Horton) ran to the cell of Billings and placing the chain on the anvil dealt it two ponderous blows. The smoke drove them from the

room to get breath, but Burritt soon returned and again strove to lose the iron bonds. He, too, was suffocated by the hot smoke and fell to the floor where he was rescued by Mr. Watrons in a nearly exhausted condition and poor Billings was left to the flames. The next day his charred remains were found beneath the ruins of the chimney. The late John Smith of Ballston Spa, who was engaged with Joseph Barker, the day before the fire, making repairs to the cells, discovered the place in the wall where Cole had tried to burn through, and informed Taylor of it. The venerable Joseph Gordon has informed the author that Taylor claimed that Billings knocked him down and that was the reason of his being ironed to the floor.

In a card to the editor of the *Independent American*, dated April 1, 1816, Mr. Taylor presented his statement which was published in that paper April 3:

"To the Editor: Permit me through your paper to express my sincere feeling of gratitude generally to the citizens in the vicinity of the court house on the morning the same was consumed by fire by their unwearied exertions in assisting me to relieve a fellow mortal from the flames at the risk of their own lives. It is also a debt due from me to mention that George Bennett, Daniel Shaw, Lemuel Moore, and Abraham Davis, (a black man) four of the unfortunate prisoners who were confined within the walls of the prison and who were relieved in time to save them from the fate of poor Billings, who fell a victim to the devouring elements, after they were liberated did not seek to escape but did all in their power to save my property. As there have been various reports respecting my loss by the fire, I would barely mention that I have been particular in inventorying such articles as I have ascertained to be missing and the amount is already between \$800 and \$1,000.

I shall preserve the inventory for the inspection of any gentleman who wishes or will take the trouble to call on the Public's Humble Servant.

RAYMOND TAYLOR.

True to his characteristics Taylor could at once shed a tear over the fate of his unfortunate victim and coolly estimate *his* loss, but not a word said of that of the county.

Ex-sheriff Jennings says that Shearer made his way to Charlton and there hired a farmer to carry him to Albany. The latter made it a condition that he should lie in the bottom of the sleigh and be covered with a blanket, and then drove rapidly to Ballston and surrendered him to the authorities. Sheriff Brisbin offered a reward of \$250 for the arrest and delivery at the Schenectady jail of Fones Cole and Peter Drapoo, or \$125 for either of them. Drapoo was a Canadian and was in custody as a horse thief. Neither were recaptured, but it was ascertained years afterwards, it is said, that Cole, who was a man of good intellect and force, made his way to a southwestern state where he lived under an assumed name, and at one time represented a constituency in the national house of representatives. Another well informed old gentleman says that it is true that he went to the southwest, where he became a noted river and land pirate, having been none other than the notorious John A. Murrell. It is a fact that Murrell's "Life" tells of his escaping from Ballston jail by burning the building. Taylor was indicted for a misdemeanor in allowing the prisoners to have a light, and at the January Sessions 1818, in the absence of District

Attorney Livingston, Maj. Azariah W. Odell (Taylor's attorney) was appointed special district attorney by order of the court. He improved the opportunity to enter an *nol pros* on the indictment. At the ensuing Oyer and Terminer, Mr. Livingston moved Taylor's trial on the ground that he had not consented to his discharge from arrest, but Judge Van Ness held that the Court of General Sessions being a distinct tribunal of competent jurisdiction, he had no power to interfere. Thus the matter ended, and here closes the history of the first court house of Saratoga county and of the town of Ballstown as the county seat.

CHAPTER IV.

• CHANGING THE COUNTY SEAT.

During the time mentioned in the two preceding chapters the development of the mineral springs at Ballston Spa and Saratoga Springs made them the chief centers of the county. Lying but seven miles apart a rivalry sprung up between them and each sought to gain an advantage over the other. The court house had no sooner been burned than a mass meeting of the citizens of the former village was held to consider a most important question. It was presided over by James Merrill, and Joel Lee was its secretary. They resolved to ask the judges of Common Pleas to order that the courts of the county should for the time being be held in the public building or academy, of the village, which stood upon what is now Science street, a few feet south of the railroad, and tendered the free use of the building. The offer was accepted by Judge Child and his co-adjutors. By an act of the legislator passed March 14, 1817, Elisha Powell and James Merrill of Milton, Isaac Gere of Galway, and John Gibson of Ballston, and Gilbert Waring of Saratoga, were appointed a commission to re-locate the county seat, and to build a court house and jail at the expense of \$10,000. Both political parties were represented in the commission, and they soon set

themselves at work in good faith to settle the location of the court house. The claims of Court House Hill was presented by Samuel De Forest; Saratoga Springs was heard by Gideon Putnam, Ashbel Andrews and Henry Walton (who had removed from what is known as the Delavan place in Ballston to that village); Gen. Dunning made a liberal proposition to have the county buildings located at Dunning Street; and John Cramer, John L. Viele and Joshua Bloore urged that Waterford was the place of all others; but Ballston Spa and the town of Milton having the influence of Judge Powell, James Merrill and Isaac Gere in the commission, won the coveted honor, which it still retains. The selection, too was largely owing to the efforts of Judge Cook of Ballston Spa, and Thomas C. Taylor and Nicholas Low of New York, who owned large tracts of land in and adjoining the village. Mr. Low, in fact, deeded to the county as a free gift the land on which the court house and county clerk's office now stands.

The commissioners reported to the board of supervisors at their fall session that they had decided on a location, and on motion of Joel Keeler, supervisor of Milton, the report was adopted and Milton was formally declared to be the shire town. The proceedings of the board do not give the ayes and nays on the motion, if they were ordered. Also on his motion, James McCrea, who was a nephew of Jane McCrea, of revolutionary memory, and who was the supervisor of Ballston, was appointed a

committee "to grade the new court house grounds at a cost not to exceed \$50."

The new court house was built under the direction of the commissioners, by the late Stephen S. Seaman. The mason work of the structure was performed under the direction of Joseph Barker, then a leading builder of this county, residing at Ballston Spa. He is still living (May 1876) in a serene old age at Spencerport, Monroe county, New York, and retains a strong and vivid memory of the early days of Saratoga county and of the men with whom he was associated. The court house consisted of the present brick structure, without the wing, and was built on the model of the old one with the exception that on the second floor the court room was assigned to the north side. Its dimensions are sixty-six by fifty feet; the wing not having been added until some years later. It was satisfactorily completed in time for the spring Circuit Court in 1819, and in the ensuing fall, on motion of Calvin Wheeler, supervisor of Providence, the new court house was formally accepted, and the bonds given by the commissioners in pursuance of the statute were cancelled. It was enlarged, by the addition of the wing, by order of the supervisors during the shrievalty of Thomas Low. The work was performed under the direction of Henry Wright of Milton.

At the term of the Common Pleas held in the academy, the time of the court was frequently taken up with disputes arising from the poor authorities of one town sending their paupers within

the bounds of another town. At that time each town of the state took care of its own poor, and their keeping was sold at each town meeting to the lowest bidder. It was not until 1827 that the county system was adopted and a more humane policy pursued towards the unfortunate paupers.

By an act of the legislature of 1818, the then judges of the Courts of Common Pleas and General Sessions were set aside and their tenure of office declared terminated. Governor De Witt Clinton, by the direction of the council of appointment, June 16, 1818, commissioned James Thompson of Milton to be first judge, and Salmon Child of Greenfield, Abraham Moe of Halfmoon, James McCrea of Ballston, and John Prior of Greenfield, to be judges of this county in the courts of Common Pleas and General Sessions, and *ex officio* members of the court of Oyer and Terminer. During the time that there was no jail in the county the sheriff was authorized by the supervisors to contract with the Schenectady sheriff for their confinement in the jail of that county. When the criminal courts were held the prisoners were brought up under guard and kept at Clark's hotel, which stood on the west side of Front street, where the railroad embankment has since been constructed. Ex-sheriff Jennings recollects that he once, as a deputy under sheriff John Dunning, brought up twelve at one time handcuffed together, and as there was a scarcity of constables on his arrival he unlocked one handcuff, passed it around a tree which stood near by the court house, and then relocked it to the

wrist of the culprit, thus safely fastening them until he could secure his team.

At the Sessions in August, 1816, John Cross of Mechanicville and Farquhar McBain of Ballston Spa were each fined \$1.50 "for selling liquor on the Sabbath contrary to the statute." At the June Sessions, 1818, Benjamin Bennett was fined \$5 for assault and battery on Peter Mallery. One year later he again appeared in the courts as the murderer of Seth Haskins.

In 1816 the fair records of our county were stained for the first time with the details of a trial and conviction for murder. Daniel Northrup of Galway had in the spring of 1816 murdered Cornelius Allen, a farmer who lived in that town, near the Charlton line. Northrup was a man of a low order of intellect and very passionate. He lived at the time of the murder in the family of his victim. Allen called him to breakfast one morning at an early hour. He arose cross and morose. At the breakfast table some angry words passed, and Northrup, seizing a knife, stabbed Allen across the table, inflicting mortal wounds. He was arrested and indicted and brought to trial at an Oyer and Terminer held in September of 1816, before Judge Smith Thompson, afterwards one of the judges of the United States Supreme Court. At his trial the people were represented by Attorney-general Thomas J. Oakley and James Thompson. The prisoner was defended by Messrs. Samuel Cook and John W. Taylor. The defense was that the prisoner was *non compos mentis*. The commission of the murder was proved by the victim's widow and the di-

eased mind of the prisoner by his mother, two brothers, and Alexander S. Platt. Under the ruling of the court he was convicted and sentenced to be hanged on the last Friday in November of that year, but Judge Smith Thompson united in a petition for his pardon, and wrote a letter to Gov. Tompkins, suggesting that it would be advisable. On the recommendation of Gov. Tompkins the legislature granted a pardon to Northrup. He was adjudged a lunatic by the proper tribunal and was confined by his friends in a private asylum until his death, about twelve years later. In 1817 Judge Yates sentenced Noah Drew, the leader of a gang of notorious counterfeiters, to states prison for eight years; and in 1818 Judge Van Ness, in an Oyer and Terminer held in the Baptist church in Ballston Spa, sentenced one Robert Morris to pay a fine of *six cents* for burglary and petit larceny. This light sentence was imposed, says the record, "in consideration of his long confinement in jail."

All subsequent terms of the courts held in this county have been held in the court house in the village of Ballston Spa.

CHAPTER V.

IMPORTANT CAUSES TRIED AT SARATOGA CIRCUIT PRIOR TO 1819.

The clerk's minutes of the causes tried in this county to the erection of this present court house and the first term held therein are very meagre, and the importance of the issues involved in them can not be deduced therefrom. Unlike important criminal trials there are no traditions handed down from sire to son regarding the merits of the cases, or the chief actors therein. Therefore I have sought the most available evidence extant of the importance of the issues involved in certain actions tried in the early days of its judicial history, being that found in the reports of cases reviewed on appeal in the "Supreme Court of Judicature," or in the "Court for the Correction of Errors."

William Bradshaw *et al.*, plaintiff in error against Patrick Callaghan and wife, defendants in error. This was action in partition to divide the lands of which James Bradshaw, late of Charlton, deceased, had died possessed. Mary Bradshaw, his widow, was joined as a party defendant by Callaghan, who was the plaintiff in the Circuit Court. It was brought to trial at the Saratoga Circuit in May 1809, before Chief Justice Kent. A verdict for the plaintiff with costs against all the defendants was ren-

dered. On appeal to the Court of Errors, the judgment as to Mary Bradshaw was reversed, and the remainder was affirmed. Chancellor Lansing pronounced the opinion of the court, holding that a widow's dower is not effected by a suit in partition, nor is she chargeable with costs in such suit. The case is reported in 8 *Johnson's Reports* 558. Samuel Cook and John W. Taylor were plaintiff's attorneys, and M. Van Everen jr. for the defendants.

Under the old and cumbrous practice of the Common law, actions for the recovery of real estate on the part of the heirs at law of deceased persons could not be commenced in the name of the real party in interest, but *ex demissione* under the title of James Jackson, or some other *alias*. This James Jackson was a fictitious personage supposed to be an Irish cousin of John Doe and Richard Roe. Thus I find the case of James Jackson, *ex dem.* Henry Livingston against Alexander Bryan, which is reported in 1 *Johnson* 322. This was an action brought for the ejectment of Bryan from "lot 7, class 3 of house lots in lot 7, in subdivision of lot 12 in allotment 16 of Kayaderosseras patent." The premises prior to the revolution belonged to Isaac Low, who adhered to the British cause. His property was sold on a bill of attainder in 1786 and the lot in question was purchased by Henry Livingston. In 1775, Low had permitted one Samuel Norton to occupy said lot. Norton joined the British army and died therein. In 1783 his family returned to the premises, and in 1787 a son of Norton procured permission from Livingston to remain. Dan-

iel Norton, the son, sold his improvements to Gideon Morgan who conveyed to defendant Bryan for \$100. The permission from Livingston to Norton was in writing and contained no reservation of rents. Bryan admitted the foregoing, but claimed that having had possession of the premises undisturbed for over thirty years he held it adverse to plaintiff's claim of title. It was brought to trial at the Saratoga Circuit in June 1805 before Judge Spencer who entered a non-suit. The case was reviewed in the Supreme Court, and the judgment of non-suit was affirmed. Levi H. Palmer was plaintiff's attorney, and Samuel Cook, the defendant's. John Bryan, a son of Alexander, to perfect the claim of title from the patentees, purchased the interest of Henry Livingston. The lands in question contained the celebrated "High Rock Spring" in Saratoga Springs. Part of the premises held by Alexander Bryan in the XII allotment, by conveyance from Daniel Norton through Morgan, is now owned by his grandson, John A. Bryan, a member of the bar of this county. Alexander Bryan lies in Greenridge Cemetery where a few years since his grandson, above named, erected a monument to his memory bearing this inscription :

"IN MEMORY OF
ALEXANDER BRYAN.

Died April 9, 1825, aged 92 years. The first permanent settler, and the first to keep a public house here, for visitors. An unpaid patriot who, alone, and at great peril, gave the first and only information of Burgoyne's intended advance on Stillwater, which led to timely preparations for the battle of September 19—followed by the memorable victory of October 7, 1777."

Another important case was that of James Jackson *ex dem.* James Waldron and Elzie, his wife against Abraham Welden. The Waldrons owned certain lands of ill defined boundaries in the Halfmoon patent, part of which they had leased to Welden. A commission was afterwards appointed to survey lines and settle disputed boundaries of the Halfmoon, Shannondhoi and Kayaderosseras patents. They filed their report and map in Saratoga county February 5, 1794. By this survey it was found that the farm was in the latter patent and was included in the lands owned by Tobias C. Ten Eyck by conveyance from the original patentees. Soon afterwards Welden purchased the fee simple of Ten Eyck, and in 1806 the Waldrons began a suit in ejectment to oust him. Tried at the Saratoga Circuit in 1807 before Judge Spencer, and a verdict for the plaintiff entered for the recovery of the lands, with costs. On appeal to the Supreme Court it was held that the plaintiffs were bound by the report of the commissioners and the judgment was reversed. This case was reported 3 *Johnson* 283. Sanders Lansing was attorney for the claimants, and Guert Van Schoonhoven defended Welden's interests.

William Pangburn against James Partridge. Action in replevin, tried at the Saratoga Circuit, May 1810 before Judge Van Ness. J. B. Yates for the plaintiff and John W. Taylor for the defendant. The plaintiff complained that defendant had taken from his "keep" one heifer of the value of \$10. Defendant plead *non cepit* and further alleged that

he took said heifer for a debt owed him by plaintiff. Judge Van Ness granted a non-suit. On motion for a new trial in the Supreme Court, it was held that replevin lies for any tortious or unlawful taking ; and not for distress only. Motion granted. Reported in 7 *Johnson* 140.

James Jackson *ex dem* James Rogers against William Clark. Action for ejectment tried at the Saratoga Circuit in 1810 before Judge Van Ness. L. H. Palmer and A. Van Vechten for plaintiff and John W. Taylor for defendant. Verdict for defendant, and on appeal to the Supreme Court, it was affirmed ; the court holding that if in the description of an estate in a deed of conveyance there are particulars sufficient to ascertain the correct bounds ; mistakes will not frustrate the intent of such indenture. 7 *Johnson* 216.

James Jackson *ex dem.* John, James, Rachel and Mary White against Charlotte White. This was an action in ejectment brought by the heirs at law of Stephen H. White, late of Ballston Spa, deceased against his widow, the devisee under his will. White, who died in 1808, was a clothier and died in possession of a large boarding house and eighteen acres of land which under certain conditions he willed to his wife Charlotte as follows : "all that large and convenient dwelling house with all the appurtenances and privileges thereunto pertaining and the same which is now improved by me as a boarding house." It was brought to trial before Judge Van Ness and a jury at the May circuit in 1810. Levi H. Palmer was attorney for the plain-

tiff and Henry Walton for the defendant. The plaintiff's were the father, brother and sisters of the testator. They claimed that that portion of eighteen acres not in the close of the boarding house was not included in the terms of the will, and by their next friend, Epenetus White jr., sought to oust the defendant who was in possession. The defense sought to establish that the testator occupied all of the eighteen acres as a messuage of his boarding house, either as a deer park, cow pasture, or as a vegetable garden for the use of said boarding house. A verdict was rendered for the defendant, which was affirmed on appeal to the Supreme Court. 8 *Johnson* 59.

James Jackson *ex dem.* Thomas Rogers against Joseph Potter. This was an action in ejectment to oust defendant from 100 acres of land in the town of Moreau. The premises were those formerly owned by David Rogers, who made a will October 19, 1805, and who died November 3, 1810. After making his will he acquired the title to the premises in question. By the terms of his will, which he never revoked, or altered by codicil, he devised all of his real estate of which he should die seized to his two natural sons. H. Bleecker was attorney for the plaintiff, who was the legal heir, and J. B. Skinner for the defendant, who claimed to hold by a deed from the devisees named in the will. A verdict was given for the plaintiffs at the Saratoga Circuit in 1812. Judgment affirmed by the Supreme Court, which held that a devise of lands will not operate upon lands purchased after the execution

of a will, unless subsequent to such purchase the devisor republishes his said will with the requisite solemnities. 9 *Johnson* 312.

Jackson ex dem. Samuel Woodruff against John Gilchrist. Action brought to eject Woodruff from lot 2 of subdivision of lot 8, in the 13th allotment of the Kayaderosseras patent. Levi H. Palmer and John V. Henry for plaintiff, and M. Van Everen jr., Martin Van Buren and Abraham Van Vechten for defendant. The suit was brought to trial at the Saratoga Circuit in 1816, before Judge Platt, with a jury. The plaintiff proved title by descent from Ann Bridges, afterward Ann Hunloke, one of the original patentees named in the patent of Kayaderosseras granted by Queen Anne, dated November 2, 1708. Defendant plead title and proved a complete chain from a conveyance made by Joshua Hunloke and Ann his wife to Peter Fauconier, bearing date February 10, 1711, which bore this endorsement: "That this day came before me, one of his majesty's justices for the county of Essex, the within named Joshua Hunloke and Ann his wife to acknowledge this indenture to be their acts and deed, this 17 of February, 1711. Attested per me, Jno. Blanchard." After hearing the testimony the jury by direction of the court returned a verdict for the plaintiff, subject to the opinion of the Supreme Court. The opinion of that tribunal was given by Chief-justice Thompson, who held that the law could not presume that the certificate could mean merely that the parties came before the justice to acknowledge the deed, but that it went further

and held that they did so acknowledge it; and that after such a lapse of time the private examination of the wife ought to be presumed, and that the estate thus acknowledged was confirmed by the act of General Assembly passed in 1771. Judgment reversed. 15 *Johnson* 88. This celebrated cause is yet distinctly remembered by the old residents of Charlton, it being called by them "the great land case." They tell of the *enormous* fee charged by Mr. Van Buren, whose services, they say, were confined to a two hours' address before the jury. They little think of the hours of study the brilliant advocate spent in mastering the vague details of the case, or of his commanding influence over the Supreme Court, exerted in carrying the knotty point in Gilchrist's favor, or they would not have deemed his five hundred dollars so very exorbitant. Thus early did our highest courts set the stamp of disapproval on claims of real estate whose titles verge on the extremity of doubt. Subsequent to the decision the hopes of the heirs of Aneke Jans and others by-gone worthies have been buried under many adverse decisions, but like Banquo's ghost they refused to "down."

Edward Fitch and Gilbert M. Wright, executors of Ebenezer Fitch against Seth C. Baldwin. This case, reported in 17 *Johnson* 161, was an action on an alleged covenant seizin which was brought to a trial at Saratoga Circuit June 1818, before Judge William W. Van Ness and a jury. James McKown, John V. Henry and Martin Van Buren managed the plaintiff's case, while the defendant's interests were guarded by Samuel G. Huntington

and Abraham Van Vechten. The respective boundaries of the Saratoga and Kayaderosseras patents were the questions in issue, although the case ultimately turned upon another point raised by the defendant. Fitch insisted that the one hundred and sixty-five acres of land in the town of Saratoga, which was claimed by him, were a part of the west end of lot 16 of great lot 25 of the Saratoga patent, granted to Peter Schuyler and others October 9, 1708, as distinguished on a map made by John R. Bleecker in 1750; and which was purchased by Ebenezer Fitch of Jonathan Lawrence, one of the patentees, January 25, 1798. On the contrary, the defendant's pleadings set up that it was lots 10 and 11 in the ninth allotment of the Kayaderosseras patent. The ignorance of the royal grantor of the vast domain she was deed in the western world was equal only to the cupidity of the grantees and the evident carelessness of their surveyors, for it was found that the boundary lines of all of Queen Anne's patents overlapped each other; and this was but one of the many suits which occupied the state courts for half a century in rectifying the conflicting claims under color of title from the different patentees. The defendant also plead *estoppel*, and offered a writing under the hands and seals of Fitch, the testator, and Baldwin, the defendant, dated May 22, 1812, by which it was argued that the defendant should withdraw a suit against the testator for the possession of certain lands in Saratoga, and each party pay his own costs; by which the testator released to defendant all the lands in lots 10

and 11 in the ninth allotment of the patent of Kayaderosseras, not included in a deed from Jonathan Lawrence. By this agreement a survey was to be made by one Caleb Ellis, who made such survey and found the lands to be in the patent of Kayaderosseras. An able and exhaustive argument followed in which Mr. Van Vechten supported the offer, and Mr. Van Buren opposed. The latter gained his point. The court ruled out the evidence, it appearing, during the argument on the offer, that Ebenezer Fitch was an old man, who trusted much to the clear head of his son Edward. The wily Baldwin took advantage of the latter's absence in Albany, and procured the elder Fitch's signature by misrepresentations. The court directed a verdict for the plaintiff for \$1,819.58 and costs. An appeal was taken to the Supreme Court, where the judgment was reversed. The court held that the plaintiff was estopped by the testator's execution and acceptance of said agreement from alleging that the lands released did not lie in the patent of Kayaderosseras. If, however, there was fraud on the part of the defendant in the execution of said agreement, the plaintiff could gain relief by a bill in Chancery. This decision, so often quoted as a ruling case in *estoppels*, was, however, declared erroneous. The next year, Mr. Henry having secured a re-argument, the Supreme Court affirmed the verdict of the Circuit. This decision was not reported, by some oversight, but of the fact I am informed by Gen. E. F. Bullard, who is a grand-

son of Ebenezer Fitch. Mr. Van Buren's fee for the argument of this case (he was not present at the trial) was fifty dollars. This is in marked contrast with the expenses of litigation in the present year of grace. Van Buren then stood in the same relation to the bar of this state as at the present do Charles O'Connor, and William M. Evarts. Their fees of \$5,000 and \$10,000 are in strong contrast with that recorded in this instance; and, indeed, it may be doubted if the services of a counselor of the first rank could now be secured in a case involving no larger pecuniary interests than that of *Fitch vs. Baldwin*.

CHAPTER VI.

TRIALS IN OYER AND TERMINER, 1819—47.

Around the court house whose completion we witnessed in the fourth chapter, gather the brightest memories of the Saratoga county bar. Within the forum enclosed by the four posts of its bar circle and from its bench have been uttered some of the most glowing periods in our tongue ; to attempt to describe which, or to enumerate the brilliant names would be to guild the stars or paint the azure. Its history will ever be sacred in the minds and memories of those permitted in later days to walk within its sacred precincts. Like the Roman standing in the midst of the ancient forum and listening in vain for the voices that were wont of old to awaken its echoes, so do we now fail to hear the strains of majestic eloquence which have fallen from cunning lips within the walls of our time-honored court room.

The first Circuit Court and Oyer and Terminer held in it convened on Tuesday, May 25, 1819. It was presided over by Chief Justice Ambrose Spencer, assisted by James Thompson, first judge, and James McCrea and Abraham Moe, judges. The court officers were Thomas Palmer, clerk ; General John Dunning, sheriff ; Richard Montgomery Livingston, district attorney and Ezra Buel, crier.

By the act of April 21, 1818, the office of district attorney was limited to each county, and Mr. Livingston was the first appointed for Saratoga. He held office until February 13, 1821, when he was succeeded by William L. F. Warren. They held their office by appointment of the Court of Sessions. Gen. Earl Stimson was foreman of the grand jury. Seven indictments were found at this term, one being against Isaac G. Armstrong, charging him with polygamy. He was tried at the Sessions in the following August. Notwithstanding he was defended by Esek Cowen and Azariah W. Odell, he was convicted and sentenced to five years in state prison at hard labor.

The second Circuit and Oyer met May 30, 1820. It was destined to be the first court in this county which directed the execution of a murderer, whose mandate was fulfilled. Benjamin Bennett, who had been indicted at the previous Sessions for the killing of Seth Haskins in Corinth, September 4, 1819, was brought to trial. The court consisted of Judge Jonas Platt; First Judge James Thompson, and Judges Salmon Child, James McCrea and John Prior. Richard M. Livingston represented the people, and Zebulon R. Shepherd of Greenwich, Washington county, was the prisoner's attorney. It is said that Bennett gave his counsel the following terse directions; "Acquit me, or hang me; I don't want to go to prison." The jury sworn consisted of Jacob Vanderheyden, John Allen, Zadock Smith, John B. Taylor, Zalmon Olmstead, John Rosevelt, Joseph Potter, Oliver Cleveland, David

Sanford, Onesimus Hubbell, Arthur Caldwell and Henry Clow. The following witnesses were sworn for the people, viz: Ira Haskins, Patty Hunt, Joseph Sanford, Dr. Henry Reynolds, Peter Ostrander, Eli Baldwin, Daniel Loveless and Peter Maltery. No evidence was given on Bennett's behalf. From the testimony it appears that Bennett, who was a roystering farmer addicted to drinking and gambling, lived in a log cabin on the site where James Early's house now stands, had been down to Jessup's Landing, and on returning home, intoxicated, met Haskins, a quondam friend, coming out of his house. He drew up a loaded whip, and saying that he would not allow no man to visit his wife in his absence, struck him on the head. Haskins fell, and Bennett picking up a stone, struck him another blow, fracturing his skull, from the effects of which he died eleven days afterward. Under the law this would have been manslaughter, but proof of Bennett's subsequent declaration showing malice were admitted by the court, and he was convicted and sentenced to be hanged on Friday, July 21, 1820. After his conviction Bennett developed traits which showed him to have been insane, among other things drawing charcoal sketches of the Savior and Satan on the walls of his cell, saying he "wanted to keep good friends with both, for he did not know into whose hands he would fall." He would spit in the faces of clergymen calling to see him, and utter the vilest abuse to his friends and acquaintances who visited him. He also refused to allow Messrs. Azariah W. Odell and Lyman B. Langworthy to

intercede with Gov. De Witt Clinton, who was then sojourning at Saratoga Springs. Notwithstanding all this, he was executed in public on the appointed day, on the "hanging ground," about a mile northeast of the court house; and, to many elderly citizens of the county, the hanging of Bennett marks an era. Gen. Dunning was the executioner in person, not shrinking from his duty as sheriff, and the prisoner was prepared for the scaffold by deputy sheriffs Joseph Jennings, Philip I. McOmber and Potter Johnson. His remains, and those of his victim, lie interred in the old cemetery at Jessup's Landing. Bennett was thirty-two years of age, and Haskins was upwards of fifty.

At the same Oyer, Herman Ostrander was tried for forging the name of Gabriel Leggett. George W. Kirkland defended him. Thirty-four witnesses were sworn for the people, and twenty-three for the prisoner, who was acquitted. Samuel Downing, afterwards widely known as the last surviving revolutionary pensioner, was the foreman of the jury. Leggett was then indicted for perjury, and after a delay of several years, the charge was dismissed. The third and fourth Oyer were held by Judges John Woodworth and Joseph C. Yates.

By the constitution of 1821, a change was made in our courts. The Supreme Court was restricted to appellate jurisdiction, and the state was divided into eight circuits, in which a "Circuit Judge" was appointed, to possess all the powers to preside in the courts of law held formerly by the Supreme

Court judges, and who were also to be vice chancellors in equity in their respective circuits. Reuben H. Walworth of Plattsburgh was appointed judge of the fourth circuit. He soon removed to Saratoga Springs to be convenient of access to the members of the bar in his jurisdiction. The fifth term was accordingly held by him in July, 1823, at which term Samuel Vinegar was convicted for an assault with intent to kill Samuel Silliman, and sent to states prison for five years. Vinegar's offence was raising and throwing a heavy hammer at Silliman. Judge Walworth said that as the prisoner had murder in his intent, the court would apply the extent of the law. He signalized his advent to the bench by stern sentences. He continued to hold the terms in this county (with the exception of that of 1824, which was presided over by Judge Samuel Nelson, of the sixth Circuit,) until 1828, when, on April 22, he was nominated and commissioned chancellor by Governor Nathaniel Pitcher. The only cases of importance, as showing the stern way the honest old judge administered the criminal law in cases tried before him, are those of John Jackson, 1826, petit larceny second offense, three years at Auburn; Charles L. Peterson, like offense, 1827, sent to "House for the reformation of juvenile delinquents in the city of New York" until twenty-one years of age; and Horace Lane, convicted of grand larceny, sent to Auburn for three years.

The May term, 1828, was held by Judge Nathan Williams of the fifth circuit, at which Octavio

Nolande, convicted of burglary, was sentenced to states prison for life. The November term of the same year was held by Judge Esek Cowen of Saratoga Springs, who had been commissioned Circuit Judge, April 22, 1828, *vice* Walworth appointed chancellor. Judge Cowen continued to hold all the terms in this county until 1836, when he was appointed judge of the Supreme court by Governor Marcy, with the exception of the May term, 1830, which was held by Judge James Vanderpoel of the third Circuit. At that term Isaac and Jane Craig, convicted of aiding a prisoner, George D. Miller, to escape from jail, was sentenced to three years' imprisonment in Auburn.

Samuel Ostrander, who had been indicted for exhuming and carrying away for purposes of dissection from the Clifton Park cemetery, November 10, 1828, the body of Patrick Folie, deceased, was brought to trial at this term. He was defended by Oran G. Otis and Joshua Bloore, both then in the zenith of their legal fame. Mr. Otis was a man of remarkable genius, and our older counselors unite in saying that he was the most eloquent advocate at the bar our county has produced. Mr. Bloore, too, was an attorney of great talent. Both passed away in the full prime of life and usefulness. Notwithstanding the skill of Mr. Bloore in examining the witnesses, and the eloquence of the silver-tongued Otis, district attorney Warren succeeded in convicting Ostrander of the disgusting crime, and he was sentenced to sixty days' imprisonment in the county jail.

At the November Oyer, 1831, another murder trial was had, being the only occasion since the erection of the county that an instance of wife murder has occurred within its limits. James Mason had been indicted for killing his wife Catharine, in the town of Clifton Park. It occurred during a drunken brawl, in which he struck his wife with a club, from the effects of which, it was testified, she died. Circuit Judge Cowen presided, assisted by Judges Thompson and Palmer of the Court of Sessions. District attorney Warren was the public prosecutor, and Oran G. Otis prepared the prisoner's defense. The jury was composed of Isaac Hubbs, William Baker, William DeRemer, Otis Bentley, Henry Rosekrans, Garrett Van Vranken, Judd Hoyt, John S. Andrews, John Kelly, Pierson Crane, Barton Gridley and John S. Sherwood. Mason was found guilty of wilful murder and received a sentence to be hanged on the last Friday in March, 1832, and it was ordered by the court that his body should be given to Dr. Samuel Freeman for dissection. Mr. Otis, however, was indefatigable in his efforts to save his client, and finally succeeded in inducing Gov. Enos T. Throop to commute his sentence to imprisonment for life. The crime hardly arose above manslaughter, and that was doubtless a wise conclusion of his case.

At the May Oyer, 1832, before Judge Cowen, another case involving the taking of human life was brought to trial. Patrick Sheridan was convicted of manslaughter in killing James Judge at the town of Saratoga Springs, March 26, of that

year. The scene of the affray, was on the railroad near Wakeman's crossing, between Ballston Spa and Saratoga Springs, on which they were laborers in the construction of the road. Sheridan was sentenced to be imprisoned at Mount Pleasant (Sing Sing) states prison for seven years. William Hay and Judiah Ellsworth were his counsel.

Again the shadows of a judicial taking of a human life descended upon the county. John Watkins was tried at the November Oyer 1833, for the wilful murder of Aaron Case at the village of Ballston Spa on the ninth day of November 1833, by stabbing him with a knife in the throat and severing the jugular vein. Case had formerly been a hotel keeper in Mechanicville, and during the absence on a visit of the proprietor of the Eagle hotel in Ballston Spa, the late James LaDow, he was in temporary charge. Watkins was a disreputable mulatto barber of the village. On the fatal day, Case discovered Watkins in the baggage room of the hotel and endeavored to capture him. The latter seizing a knife from behind the bar ran out in the street followed by Mr. Case. Reaching the middle of the street he halted and plunged the knife into the throat of Case, and then fled. Case walked back into the hotel, sat down in a chair and fell dead upon the floor. The murder was witnessed by Mr. Samuel R. Garrett, a farmer, who had just come upon the street from the hotel shed. As soon as the murderer fled, he gave chase, sounding the alarm. Watkins was seized in front of where the

First National bank now stands by Samuel S. Wake-man, Stephen Fox, Abraham T. Davis and Moses Williams, and by the aid of Mr. Garrett he was securely tied and delivered to jailor Dunning. The court which tried Watkins was composed of Circuit judge Cowen with First judge Samuel Young and judges Steele, Granger, Van Schoonhoven and Palmer. He was defended by Oran G. Otis. The jury consisted of Samuel S. Southard, Joseph Wilcox, Robert Kelly, Edward Rexford, Henry Kilmer, Benjamin R. Putnam, Judd Hoyt, Arnold Paul, John Jones, Michael Vincent, John B. Ross and Eli Dunning. The witnesses sworn for the people were Samuel R. Garrett, Alonzo Gould, Ellen Bevin, Sarah Jane Ladow, Joseph W. Loomis, George W. Beach, Dr. E. St. John, S. S. Wake-man, Abraham T. Davis and Moses Williams. The culprit having no witnesses to prove mitigating circumstances, counselor Otis had only to depend on cross examination to furnish his defense. District Attorney Warren secured another conviction, and Watkins was sentenced to be hanged on Friday, January 17, 1834. He now began a series of dissimulations and gained somewhat the popular sympathy by professing great religious zeal and repentance for his past misdeeds. Mr. Otis' efforts to secure a commutation of his sentence would have been effectual, doubtless, had not Watkins by another base and murderous act sealed his fate. During the month of December, jailor Dunning went into his cell to read a chapter in the Bible to him, and while the good old man was reading the sacred text, the culprit struck him with a billet of wood, seized

his keys and escaped. He concealed himself for some days in S. S. Seaman's barn in Ballston, and went from there in the night to a barn in Malta, on the Merrill farm. While in Seaman's barn his feet were badly frozen. His hiding place was at last divulged by a colored man and he was taken back to his doom. On the appointed day, he was taken to the spot where Bennett thirteen years before had expiated his crime, and on the same gallows he was "hanged by the neck until he was dead" by sheriff John Vernam. He, too, was prepared for the fatal fall by under sheriff Joseph Jennings, who yet retains the noose used on the occasion. Ex-Judge Hulbert, then an apprentice boy of the Ballston Spa *Gazette*, tells me that he remembers the printing at that office of an alleged confession of Watkins, along with his trial and execution, in which he stated that he had formerly been a pirate and had committed the crime of murder on several former occasions. The "confession" was printed in a sensational "*Police Gazette*" style and was said to have been written by the late Elias G. Palmer. It is also said, however, that when Watkins made the confession he hoped that it would secure his reprieve and a commutation of his sentence. On the gallows he declared it was false. Since then the old scaffold has rotted in its storage place, and may it be hoped many years may elapse ere the sheriff of Saratoga county shall again be called upon to erect another.

The November Oyer, 1836, was held by Judge

John Willard of Saratoga Springs, who had been appointed by Gov. Marcy, September 3, to the place vacated by the appointment of Judge Cowen to the Supreme bench. He had previously been first judge of Washington county. On the fourth day of the term county clerk Goodrich made the following entry: "Court tried to convene and could not; Hon. John Willard only being present. Adjourned *sine die*." This entry is explained as follows: The judges of the Court of Common Pleas insisted that being a numerical majority they could control the action of the court in bringing in the criminal calendar. Both Circuit Judges Cowen and Willard resisted this claim, as trenching on their prerogatives. At a previous term, a collision of authority had arisen between Judges Cowen and Young, in which the latter was at first successful in ordering the district attorney to call the criminal calendar, and the former gained his point by forbidding the clerk to obey Young's orders. These differences grew out of a dual jurisdiction of the two courts, which created more or less trouble throughout the state, until both courts were abrogated by the constitution of 1846. The district attorney was an appointee of the Court of Sessions, while the county clerk was clerk of the Circuit court and bound to obey its commands. At the December Oyer, 1840, Jonathan A. Brown of Half-moon was convicted of illegal voting in Waterford, Nov. 5, 1839. Chesselden Ellis was district attorney, and the prisoner was defended by Joshua Bloore.

At the May Oyer, 1841, an indictment was found for one of the most audacious conspiracies to defraud that has ever disgraced the annals of any criminal court. Samuel S. Welden, Amaziah Ford and Benjamin Howd were charged with conspiring to defraud William Green of Ballston Spa. They were brought to trial at the May Oyer, 1843. Edward F. Bullard, special district attorney to try cases in which District Attorney Beach had been engaged for the defense previous to his appointment, appeared for the people; William A. Beach for defendants Welden and Ford, and John K. Porter for Howd. I find the proven facts from the record of conviction to have been that the prisoners illegally conspired February 29, 1842, to falsely, move and maintain suits before Samuel Wilbur, a justice of the peace of the town of Clifton Park, and, also, before James Van Hynning, a justice of the peace of the town of Malta, against William P. Green in which Ford appeared as plaintiff, and, also, others in which Welden was the plaintiff. That they procured the issuance of a summons against the said Green from the said justices and delivered them to Howd, a constable of Clifton Park, for service. That he duly returned them "personally served," when in fact they had been served on another person procured to personate Green. That on the return days of said summons appearance was made by Ford and Welden as plaintiffs, and judgments were taken against Green, as in default. The proof was so direct against Ford and Welden that they were convicted and sentenced to three

month's imprisonment in the county jail, and to pay a fine of \$250. Howd escaped, there being a doubt whether he was a co-conspirator, or a dupe of the other parties.

At the May Oyer 1844, Abraham Speck was convicted of an assault with a gun on Renben E. Seaman, collector of district No. 7, Saratoga Springs, with intent to kill because Seaman had made a levy on his property to pay a school tax. District Attorney Beach prosecuted, and John K. Porter defended the prisoner. This case was at the commencement of the brilliant legal strife of those eminent advocates at our bar, in which they laid the foundations of their future fame. Speck, who was the well known deformed colored man, was sentenced to ten years imprisonment. After serving about half of his time he was pardoned by Gov. Seward through the influence of the late Gen. James M. Cook, and lived to be the first of his race to vote at the polls held in the village of Ballston Spa, after the adoption of the fifteenth amendment, at the special judicial election held in 1870 to elect judges of the Court of Appeals.

Another murder trial darkens the minutes of the Oyer and Terminer. At the May term 1846, Abraham Wilcox was brought to the bar charged with the murder of Thomas McKinstry, at the town of Saratoga December 2, 1845. Wilcox was a young man of a weak mind, induced by an unfortunate habit, and becoming enraged at the preference shown for McKinstry by a certain young lady that both admired, he stabbed him several times so that he

nstantly died. He then ran and was found soon after hanging in his barn. While the persons who found him, thinking him dead, were discussing whether to cut him down or await the arrival of a coroner, Dr. Oliver Brisbin arrived. As he was saying that it was usual to await the arrival of that officer, Owen M. Roberts of Moreau, drove up and at once severed the strap, and Wilcox was found to be yet alive. He was brought to the jail in Balls Bluff, on Spa. Henry W. Merrill was engaged to defend him, and, after his indictment John K. Porter and Augustus Bockes were associated in the defense. Against this strong array, District Attorney Beach brought Wilcox to trial. The court was composed of Circuit Judge Willard, and judges Warren, Stone, Mandeville and Gilchrist. The jury impaneled to try the indictment was William De Lemer, Julius H. Rice, James H. Darrow, Gardner Edmunds, Nathaniel Seelye, Eliphalet Merriam, Wm. H. Alexander, Albert Clute, Henry Lead, 2d, Nelson Cole, Gorham Dennison and Daniel Eddy. The trial was closely contested and lasted three days. The defense was insanity. In those days that was a new feature, and Wilcox was convicted and received the death sentence to be executed July 28, 1846. His counsel laid the case before Chancellor Walworth, who adjudged that Wilcox was of an unsound mind. On his representations Gov. Wright commuted the sentence to imprisonment for life, and Wilcox died in Danvers.

Judge Willard had held every term in this county

from the date of his appointment ; but the time now arrived when the provisions of the new constitution bid him lay aside his old robes of office and accept the ermine fresh from the people by an election to the new office of Justice of the Supreme court. The last Oyer and Terminer held in this county under the constitution of 1821 convened at the court house in May, 1847. Judges Willard, Warren, Stone and Gilchrist sat upon the bench ; James W. Horton was clerk ; Thomas Low, sheriff and Hiram Boss, crier. None of these survive except the veteran clerk, who is now in the thirty-first year of his service.

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CHAPTER VIII.

INDICTMENTS TRIED IN THE COURT OF GENERAL SESSIONS, FROM 1819 TO 1847.

The Court of General Sessions of the Peace is one of the most ancient known to our constitution and the laws. It was first instituted in the colony of New York under the administration of Governor Thomas Dongan, by an act of the colonial assembly in 1683, but was abolished by order of Sir Edmond Andross, who superseded Col. Dongan, under whose administration King James II sought to unite the New England colonies with New York and the settlements in East and West Jersey. The experiment failed, for James was forced to leave England by the revolution of the same year, which placed William of Orange and Mary Stuart on the throne. The colonists soon made it too warm for his tyrannical tool, Andross, to remain and he left the New World forever. In 1699, under the administration of the colonial governor Richard Coote, Earl of Bellamont, the assembly again established the Court of Sessions. It received the royal sanction in the first year of the reign of Queen Ann, 1702, Edward Hyde, lord viscount Cornbury, being the colonial governor. It was the same Lord Cornbury who two years later issued the royal patent of the *Kayaderoseras* to Nanning Harmanse and

twelve others, which forms the basis of the title of two-thirds of the land in this county, and which patent with its large waxen seal and quaint phraseology and chirography is now on file in our county clerk's office. Thus the decrees establishing local courts and the title to a large portion of the lands in this county are co-existent and bear the same seal and signature.

We have hitherto seen that the legislature of 1814 provided that thereafter the Court of Sessions in the several counties should be holden by the Judges of Common Pleas. This provision was continued by the constitution of 1821, and it remained in their jurisdiction until the constitution of 1846 abolishing both courts, and reorganized the county courts on their present basis. Therefore, in pursuance of law and by the appointment of the Judges of Common Pleas, the first term of the Court of General Sessions held in the present court house, convened August 24, 1819. Judge James Thompson presided, with Judges Salmon Child, Abraham Moe, James McCrea and John Prior on the bench. The other court officers were those named in the last chapter at being present at the first Oyer and Terminer. During the ten years succeeding from 1819, this court was occupied in disposing of petty criminals, and no important trials were held at its bar. During that period, Samuel Cook of Milton, James Van Schoonhoven of Waterford, Doctor John H. Steel of Saratoga Springs, Nicholas B. Doe of Waterford and George Palmer of Stillwater were successively commissioned as judges

to fill vacancies. On the thirteenth of February, 1821, a change in the political whirligig compelled District Attorney Livingston to retire from office, and William L. F. Warren was appointed to succeed him. He made a fearless and worthy public prosecutor, and won the respect of all while he performed its duties.

During this period the first jury of this county which were fed in their room by order of the court was that impaneled to try an indictment found against one Teunis McGinnis, for perjury alleged to have been committed in an action tried before Judge Granger. Whether it was owing to the want of evidence, the eloquence of counsellor Otis in his behalf, or the mollifying effects of the "square meal" provided by the court or not cannot be stated, but the jury acquitted Mr. McGinness.

At the April term 1830, John Smith, the individual, who, next to John Doe, is the most numerous culprit in country, was heard by P. H. McOmber, his attorney, on an appeal from an order entered in justices court, requiring him to keep the peace towards the people of the state of New York, and particularly towards Henry Wilsey. The court minutes do not disclose the gravamen of the offense charged against the doughty John, but the fact that the order was confirmed leads us to doubt not that he made some "threats full of imports dire, and actions fierce and sanguinary."

At this term was tried an indictment which created great interest from the high social standing of the party accused. George Brown, a

student at Union college, and a son of the famous lawyer, David Paul Brown, of Philadelphia, was indicted for having disturbed a camp-meeting, held in Merrill's grove, in Malta, in the previous summer. Young Brown was defended by his father, Horatio Buel, of Glen's Falls, and Oran G. Otis, of Ballston Spa. An *alibi* strong enough to convince the elder Weller was proved. It was shown conclusively that George Brown was at his quarters in Union college, at the hour he was alleged to have been in Malta. Witnesses who had sworn positively to his identity were confused by the appearance of his brother, Peter A. Brown, who, it afterwards appeared, was the real culprit. The jury retired under the charge of constable Rowland A. Wright, but after careful deliberation were discharged as being unable to tell whether George was Peter, or Peter was George. District Attorney Warren thereupon entered a *nolle prosequi* by permission of the court.

At the August term of the same year John Tippet was convicted on two indictments for horse stealing and jail breaking, and sentenced to Sing Sing for five years. This was the second case of "special jail delivery" from the present court house. It was not as successful as the first, which occurred in 1821, when Richard Worden and Eliphalet Williams, *alias* Erastus Whitney, *alias* Charles Whitney, *alias* Charles Cleveland, counterfeiters, bade Gen. Dunning a surreptitious farewell and left not even their regrets behind. Solita-

ry cells were then ordered for refractory prisoners, on the principle of putting up the bars after the cattle have wandered from the field. They were constructed in the basement of the jail under the common cells, and were long known as the "dungeons." They have not been used in many years.

At the June term, 1831, Margaret Fulmer was convicted for keeping a disorderly house in the village of Ballston Spa, and sentenced to sixty days in jail, and to pay a fine of \$20. To the credit of the county seat, every effort on the part of parties of depraved habits to maintain similar institutions there has been ground under the iron heel of the law.

Under the provisions of the constitution of 1821, the first judge held his office by appointment, for the term of five years, and on the expiration of Judge James Thompson's term, April 30, 1833, Governor Marcy appointed Hon. Samuel Young to the seat of the presiding judge of this county. Col. Young was one of the ripest scholars of the state, and was a lawyer of great acumen and deep reading. He had been a member of the state senate for several years, where his voice, both in the senate and the court of errors, had had great weight, and his reported opinions in the latter had become a part of established precedents of our courts, and are quoted not only in the courts of every state and United States, but also in the mother country. The first case of importance, brought before Judge Young, will be remembered by many of our older citizens. The late David F. White having been made the victim of the petty spite of Harvey Loomis,

then landlord of the Sans Souci, cut a green withe and severely thrashed the latter in front of his hotel, on the public street in broad daylight. Loomis procured his indictment for an assault and battery, at the August term, 1834. Wit e plead guilty on being arraigned, but both Judge Young and District Attorney Warren (who was a brother-in-law of White) refused to accept it. He was finally tried in August, 1835, and was fined thirty dollars, which doubtless acted as an emollient on the injured feelings and limbs of Loomis.

At the August term, 1836, one Thomas McGinniss was convicted of selling, contrary to statute, "one glass, if no more, of liquor," and fined \$25. September 6, 1836, the judges of Common Pleas appointed Nicholas Hill jr. of Saratoga Springs to be district attorney. Mr. Hill was then at the head of the bar of this county, and was enjoying a lucrative practice. He, however, very soon found that the duties of his office interfered with his clientage in an irreconcilable manner, and on the 25th of the next April he resigned, and Chesselden Ellis of Waterford was appointed by the court to the vacant position.

In 1835 indictments were found against Reuben S. Clark, his son John S. Clark, Leander Lawrence and others of the "Snake Hill bank," for uttering counterfeit money. These cases occupied the attention of both the Oyer and Sessions for several years, but for "deeds that were dark" John S. Clark was "peculiar," and evaded conviction on every indictment found against him. Several of his victims

suffered terms of imprisonment, and his father-in-law, Ezekiel Lawrence, a worthy Stillwater farmer, was nearly ruined financially in paying the forfeited bonds of Reuben S. Clark and Leander Lawrence. Nicholas Hill jr. was Clark's attorney.

On the expiration of Judge Young's term in 1838, Gov. Marcy appointed Thomas J. Marvin of Saratoga Springs to be first judge ; and George G. Scott of Milton and John Gilchrist of Charlton were appointed judges. Judge Marvin had been appointed one of the judges of Common Pleas two years previously. He served with good acceptance until the office was abolished in 1847.

At the August term, 1839, John L. Carpenter was convicted and fined \$20 for selling lottery tickets ; since which time the law has been a dead letter in this county, as far as convictions for the crime show. At the same term Henry Storm, *alias* Henry Scott *alias* Henry Stone, was brought to trial for burglary and larceny. Having the letters "H. S." in India ink on his hand it was impossible for him to travel beyond that latitude in seeking a name, so he listened to the advice of counselor Abel Meeker and went to Auburn for five years on a plea of guilty of grand larceny. Also at the same term, Reuben Priest was convicted of procuring the signature of Justice Benjamin K. Bryan of Mechanicville to a written instrument under false pretences, and was fined \$100.

At the April term, 1841, Oscar Brazee, Parker Thomas, Patrick Hart, Lemuel Rose and George Taylor, were indicted and tried for an attempt to

break jail February 1, 1840, by sawing the window bars and removing stone from the base of a window. They were detected and remanded to the custody of jailor Stebbins. Thomas, who was also held as a counterfeiter, was sent to the states prison for three years, and Ross was also convicted and sentenced to the county jail for six months.

At the August term, 1843, Sabine Harris was tried and convicted of the crime of burglary and larceny, in breaking into and robbing the store of Fellows & Viall, in Mechanicville, February 12, of that year. Notwithstanding he had the efforts of William A. Beach in his behalf, the proof was so direct that he was convicted and sentenced to four years at Auburn.

William A. Beach having been appointed district attorney, September 11, 1843 ; at the December term Edward F. Bullard was appointed special district attorney to try cases in which Mr. Beach had been engaged by the defense. Amos Alsdorf, a constable of Clifton Park, was fined \$50 at this term for having corruptly allowed one John Philbrick, a prisoner committed to his custody by justice B. K. Bryan, to escape. At the April term, 1844, an order from Governor Bouck was entered on the minutes of the court, directing that thereafter all male prisoners from this county should be sent to the new states prison, now known as Dannemora.

The famous Empire Club of the city of New York, under the lead of Capt. Isaiah Rynders, a native of Waterford, will long be remembered by students of

political history. It was formed about the year 1844, and did efficient service in the Clay and Polk presidential campaign of that year. It worked in the interest of the democratic party and was most heartily feared and execrated by the whig leaders on account of its Donnybrook tendencies. Gen. Bullard has kindly furnished the author with the following particulars of an occurrence in this county, in which the stalwart Rynders and his shoulder hitters played an important part, and which but for the shrewdness of his attorneys would have changed his field of operations to a more northern latitude for several years. Rynders' parents, brother and sister resided in Waterford, where he was in the habit of visiting them occasionally. Frequently while there he would get into heated political discussions with a local Whig champion named Russell Losee. They finally became bitter personal enemies. In April, 1845, Rynders came to Waterford in company with two prize fighters named Phillips and McCloskey, and they were present at the regular town meeting. Towards night a fight occurred in the street near the polls. John Akinson, (who was killed recently by the cars) a large and powerful Irishman and the only whig Celt in the place, stepped across the street to a shop and seizing a blacksmith's sledge came into the crowd and knocked down James Rynders (Isaiah's brother) and the two prize fighters. Before he reached Capt. Rynders the latter drew a pistol and fired into the crowd. During the stam-

pede this occasioned the Captain retreated and had his *pounded* borne from the field, badly demoralized. In the *melee* the sheath of a dagger pistol was dropped by him and secured as evidence.

Isaiah and James Rynders were duly indicted by the next grand jury for riot in connection with Phillips and McCloskey. Isaiah was also indicted for assault with a deadly weapon with intent to kill Russell Losee and William Campbell. After several escapades and forfeitures and estreatments of bail bonds they were brought to trial in December 1846. William A. Beach was district attorney, but party spirit ran high and the leading whigs of the county assumed the prosecution. The election of Polk in 1844 had been carried by the vote of New York, and Rynders and his shoulder hitting Empire Club had been strongly instrumental in achieving that result. The whigs had now, they thought, the power to shelve him at Dannemora, so they engaged Judiah Ellsworth and John K. Porter, the most able and distinguished of their legal partisans in the county, to assist Mr. Beach. The latter stood aside and gave them full scope. Gen. Bullard defended the prisoners, and had Judge Hay associated with him. When the indictments were reached, the prosecution asked the defendants' counsel which of the two they preferred to try first. Gen. Bullard promptly responded the riot charge against the four prisoners. The trial was then moved and a jury was impaneled. Russell Losee was called and sworn as to the riot,

giving all the facts of the shooting, and testifying that Isaiah Rynders pointed a pistol towards him and discharged it. No objection was made to the testimony by the defendants' counsel. After the prosecution had closed, Judge Hay remarked that, as a plain case had been made by the people the defense would offer no testimony. The jury retired and returned with a verdict against Isaiah and James Rynders. Judge Marvin thereupon passed sentence, fining the former \$100 and the latter \$50.

The prosecution then moved the trial of the indictment against the famous Captain for assault with intent to kill with a deadly weapon. The great crowd that surged into the court house now expected to see the proceedings that would in a few hours consign him to a felon's cell and terminate his wild political career. A jury was sworn and Losee again took the witness stand and began to repeat the evidence given on the former trial. At this point Gen. Bullard raised the constitutional objection that a person cannot be tried twice for the same offense, or act; and claimed that Rynders had already suffered the penalty of the law for the offense the witness was delineating. If a bomb shell had exploded at this minute in the bar the distinguished counsel for the people could not have been more astonished than at this unexpected upshot of affairs. They argued at length to overcome the objection. The horrid looking sheath (dropped by Rynders in his flight) was dramatically brandished before the court. But all to no avail, Judge Mar-

vin held the objection to be well taken and ordered the discharge of Rynders.

The latter was appointed to a lucrative office in New York by President Polk and held it until removed by Gen. Taylor. Once more he came into political notice. Twenty years ago he and the Empire Club were again active in the campaign that ended in the election of James Buchanan. He was appointed as a reward to the honorable position of marshal of the southern district of New York, and discharged its duties with credit. One of his exploits was his arrest of Lamar's famous yacht *Wanderer* which was fitted out in the harbor of New York for a slave voyage in the summer of 1860. Rynders dressed himself as a rustic and strolled along the wharf one forenoon. In this *incognito* he apparently blundered on board of the slaver, and amused the officers and men with his droll and uncouth expressions. Completely allaying their apprehensions, he gathered information which could in no other manner have been obtained, and probably by no other man. In the afternoon, in his character as marshal, he again boarded the yacht at the head of a file of marines and libelled the vessel. This one exploit went a great way towards wiping out with all parties the obloquy formerly attached to his name. He was always kind and generous to his aged parents and supported them in their latter days in comfort. While holding his last office, he one day met Gen. Bullard on Broadway. After exchanging salutations,

he stated that he had never paid him for that "little service done for him in Ballston," and then handed him twenty five dollars. It was over ten years after the trial and all legal claim on him was barred. What he did therefore was a matter of honor and gratitude. He is yet living somewhere in New Jersey. In his prime he was an earnest and magnetic speaker and had a wonderful influence with the uneducated masses whenever he addressed them. The author remembers hearing him speak in Cohoes in 1860.

At the September term 1845, Daniel D. Keeler was tried as an accessory to the crime of William S. Travis who entered the barn of Andrew Van Vranken in Clifton park, April 16, 1845, and took therefrom one horse, a wagon and a harness. Travis had previously been convicted and sent to states prison for five years. The people were represented by District Attorney Beach, John K. Porter and Edward F. Bullard. Keeler was defended by John Brotherson and William B. Litch. The jury retired under the charge of constable William B. Harris and returned with a verdict of guilty. Keeler was sent to share Travis' imprisonment.

At the September term 1846 the name of John Radford of Galway, appeared as one of the constables in attendance at court. He continued in office until his death in 1871, and was regularly summoned by the sheriff to attend all the courts of this county. His white head became to be regarded

as much a fixture of the court room as did the four pillars of the bar against one of which he was accustomed to recline.

About this period William A. Beach and John K. Porter stood at the front of the bar of Saratoga county and their fame was fast widening and creating the demand for them to remove first to Troy and Albany, and finally to the great metropolis of our nation, where they still stand side by side with O'Connor and Evarts in the front rank of the bar of the United States. An incident in their early rivalry and strife to excel is related by an eye witness to the author. At the December term, 1846, William R. Ford of Ballston Spa, and his cousin William H. Ford were brought to trial for an assault and battery on Thomas Mainhood, an English giant who resided for many years in that village. The Fords were diminutive lads of their age, and, as their fathers refused to become interested in their behalf, Mr. Porter volunteered to defend them. He excited considerable merriment in court by a comparison of the size of his "infants" with the herculean Mainhood. This aroused the leonine energy of Mr. Beach, who pressed the matter to the jury and secured a conviction. Callender Beecher volunteered to aid Mr. Porter. The boys were fined \$15 each, whereupon Mr. Beach acknowledged the receipt of the fines and in a trumpet tone told the lads to go home and keep out of such bad company. At the same term John McKnight was convicted of arson in firing the store of Samuel Irish, in Ballston

pa, on the night of August 21, 1846. He was defended by Porter and Hay, but was convicted and sentenced to ten years in states prison. At the next term, held in March, 1847, Irish was convicted as an accessory of McKnight and sent up for a like term. His object, it was proved, was to obtain the insurance.

The March term, 1847, was the last held under the old constitution. First judge Thomas J. Martin with judges W. L. F. Warren, John Gilchrist and Lewis Stone sat on the bench. Thomas Low was sheriff; James W. Horton, clerk; and Hiram Boss, crier. The most important case tried at that term was the indictment against Thomas B. Thompson, Joseph Bitely, Sanford Olmstead, Levi Olmstead, Jacob Wallace, John Doty John C. Fullerton, John Vanderwerken and David DeGarmo for tearing down the Fort Miller state dam across the Hudson river. The defendants were farmers owning the fee simple of lands in the town of Northumberland which they claimed had been flooded by the state contrary to the well known legal maxim that "private property cannot be converted to the public use without due compensation." In the course they took under the cover of that principle they acted in accordance with the advice of Judge Hay. At the trial the state was represented by Hon. John Van Buren, attorney general, and District Attorney Beach. The defense was conducted by Judge Hay and John K. Porter. The former was particularly severe in his address to the jury upon

what he termed the "Fort Miller canal ring," who had "imported Prince John to aid William A. Beach in the warfare they were waging against the honest yeomanry of Northumberland." The jury found a verdict of acquittal.

In addition to the other judges mentioned who sat in the Court of Sessions were Seymour St. John of Providence and Joshua Mandeville of Waterford. In the clerk's desk had sat successively Alpheus Goodrich, Archibald Smith, Horace Goodrich and James W. Horton. John Dunning had been succeeded as sheriff by John R. Mott, John Dunning, Lyman B. Langworthy, John Dunning, John Vernam, Joseph Jennings, Samuel Freeman, Robert Spier, Isaac Frink, and Thomas Low; and as jailor by Chester Stebbins, Thomas Low, Rowland A. Wright and Philip H. McOmber, Major Buel, the old crier, had been followed in that "old public functionary" line by Nathaniel Stewart and Hiram Boss. Thus closed the criminal court records of this county under the old system.

CHAPTER VIII.

THE COURT OF COMMON PLEAS.

The Common Pleas as it existed in the state under the constitutions of 1777 and 1821, was in all essential elements the successor of the original colonial court of the same name established in New York by the order of the governor and council May 15 1689. Besides the Common Law jurisdiction inherent in it as a court of the realm, which was recognized by the state constitutions before mentioned ; it had statutory authority confided to it by successive legislatures until its scope embraced power to try local and transitory actions wherein the amount sought to be recovered did not exceed a certain sum named in the statute, which was fixed by different legislatures at various sums ; to hear appeals from justices' courts and to grant new trials ; to have the custody of insolvent debtors, and to grant release to such insolvents ; to hear and determine suits in partition of lands ; to issue permits for ferriages ; to have the custody of the persons and estates of lunatics ; to try and determine suits in ejectment, and such other jurisdiction, either original or on appeal from the court below, as from time to time was confided to it by the legislature in their wisdom, until it became so burdened that it was

unequal to its task, and the difficulty to get a hearing at its bar was such as to apply to it throughout the state the witty epigram applied to that of our county at a certain period by the late Horatio Buel of Glen's Falls:

"The sloth is slow, the snail is slow ;
They dearly love their ease :
But the slowest thing on all Gods's earth
Is the Saratoga Common Pleas."

The first term of this court held in the new court house convened August 24, 1819, with First judge James Thompson and judges Abraham Moe, Salmon Child and John Prior on the bench. At the first term the court ordered that two solitary cells be prepared in the goal for the reception of convicts who may be sentenced to punishment therein. They also took measures to alleviate the woes of those unfortunate poor debtors who were consigned to the county jail because they were guilty of not having enough of this world's goods to satisfy the claims of their creditors. They fixed the limits within which this class might secure labor to support themselves and families, and woe to them and their bailors if they wandered beyond the stated "metes and bounds." The "limits" were enlarged at different terms until in August, 1829 it was "ordered that the jail limits for this county be altered and established according to the boundaries and surveys made by James Scott, and that as soon as the said James Scott makes a description and map thereof and files the same in the clerk's office

"this county the said jail limits shall take effect." They were accordingly filed August 29, 1829, and remain to this day as then established. The limits" are as follows :

"Beginning on the north line of the town of Ballston at the northeast corner of land belonging to Stephen Smith and runs thence north fifty-four chains and ninety one links to a post set in the ground ; thence west nineteen chains and thirty-eight links to post set in the ground ; on the easterly side by the road running northerly from Ballston Spa to Greenfield thence north eleven chains to a stake set in the ground ; thence west fifteen chains and thirty-one links to a stake set in the ground ; thence south twenty-five chains and eighty six links to a stake set in the ground ; thence west thirty-four chains and sixty-nine links to a stake set in the ground ; thence south sixty two chains and thirty-eight links to a stake set in the ground ; thence east sixty-nine chains and thirty-eight links to a stake set in the ground ; thence north twenty-two chains and sixteen links to the place of beginning, containing five hundred acres of land. The above courses being run as the magnetic needle pointed in the year 1769."

The imprisonment of a debtor was in the main an unsatisfactory process in the collection of debts. The debtor usually found friends to bail him for the "jail liberties," and many were the devices used by both parties, the creditors to entice him beyond the boundaries and thus render the bailors liable for the debt, and the debtor to return surreptitiously to his home and then keep his "weather eye" turned in the direction of his prosecutor to watch for any sudden movement on his part. This was usually done on Sunday, on which day he was at liberty to go where he pleased, for no civil process could be then served, and when once at home the

temptation to remain was too strong to resist. From many anecdotes, I select the following as illustrative of the state of affairs between these two important classes of the body politic. A country merchant having a debtor "on the limits" hired a man to induce the latter to go with him to spear suckers in the Gordon creek one fine May evening, and as soon as they had crossed the fatal line an officer stepped from his ambush and served the process on the sheriff. The matter was then in readiness to commence an action for an escape against the sheriff, who was now bound to pay the debt and then look to his securities for remuneration. The other was that of a man in Stillwater, who was unable to pay his physician's bill, and in consequence soon found himself enjoying a "sojourn at the Springs." After a few weeks this got to be irksome, and he yearned for the society to be found at the "South end of the lake." So trusting to his ability to outwit his adversary he returned home. After several days he learned from his scouts that the enemy was in motion, and at once he began a "masterly retreat" on Ballston. It was a bright summer's night, and as he was trudging on foot and had just crossed the Mourning-kil he heard the sound of a wagon in the rear. Hastily seeking cover, he saw his creditor drive leisurely by. Taking a convenient distance he brought up the rear in the march to the court house. Sheriff Dunning was aroused by the creditor and informed "that — — —, a judgment debtor confined in the jail limits had escaped and

as then at his home in Stillwater." This assertion was instantly negatived by the debtor, who had arrived opposite where the clerk's office now stands, and indignantly pronounced it a falsehood.

But the time came when it was no longer a crime to be "poor but honest," and the statute abolishing imprisonment for debt, excepting those of a tortuous origin, took effect March 4, 1832, and the "jail mits," except for debtors whose delinquencies are of a *quasi* criminal nature, ceased to exist. It went to the shades to be gathered with the whipping post, the cucking stool and other "liberties" secured to the English speaking citizen by that famous instrument obtained on the banks of the Runnymede by rebellious barons from the unwilling king.

All topics relating to highways and bridges were part of the common law jurisdiction of this court and frequent questions arose in this county in the early years for it to determine. The towns of Milton and Saratoga by reason of the Kayaderosseras and Fish creeks were put to an undue expense to maintain free bridges for the use of the public, and they justly asked that the county should be taxed to assist in maintaining those on the great thoroughfares. At the August term 1822, the following entry is made in the minutes :

On reading and filing the petition of the commissioners of highways of the town of Milton on their appeal from the determination of the board of supervisors of the county of Saratoga against the application of the said commissioners to the said board of supervisors pursuant to section 33 of the "act to regulate highways," passed March 19, 1813, for such sum of money to be raised on the

said county as would be sufficient to defray the expenses of erecting and repairing bridges in the said town of Milton, and praying that the said determination might be revised. And the court now having revised said determination, and it having been duly made to appear to the court that the said town of Milton is unreasonably burdened by having to erect and repair necessary bridges across the Kayaderosseras: It is therefore ordered, that the said supervisor raise the sum of \$500 on the said county for the purpose of erecting and repairing bridges in the said town of Milton.

With the amount thus raised the commissioners erected the two stone culvert bridges known for nearly half a century as the "Blue Mill" and "Factory village bridges." They were substantially built by Joseph Barker, but now both have been removed; the latter by the march of improvement, and the former by the freshet of October 13, 1869. A curious circumstance connected with this was the fact that Mr. Barker was visiting in Ballston Spa at that time, and from the railroad above he witnessed the fall of the old bridge. Similar rules were entered subsequently regarding bridges in Saratoga.

Previous to 1823, all causes heard in this court by appeal were heard on pleadings *de novo*, but in the April term that year the court simplified the practice by ordering that thereafter appeals should be "heard on the pleadings in the courts below." This required greater care in the joinder of issues in the lower court, and rendered obsolete a class of men who had gained a precarious livelihood by an irregular practice without license in courts not of record, and by the mystifications they threw their

ases into gained for themselves the *soubriquet* of 'pettifoggers.' The naturalization of aliens was one of the duties of this court, confided to it as a court of record by the laws of the United States, and at every term certificates of citizenship were issued, and in many instances the parties thus naturalized became prominent citizens and business men of the county. The first to be naturalized in the present court house were Stephen and Thomas Pitcomb of Waterford.

The want of system in the care and preservation of the records in the clerk's offices of the several counties led the legislature to pass a statute April 8, 1826, requiring indices of deeds and mortgages to be made and kept in said offices; and, at the August term, 1827, the court entered an order directing county clerk Thomas Palmer to make such indices. And, on the minutes of the April term, 1842, the following order was given to county clerk Archibald Smith by Thomas J. Marvin, first judge:

"Whereas the minutes of the courts of this county not having been engrossed on the books of record provided for that purpose several years past, and it being necessary for the due preservation of such minutes that they should not be left in the form of mere notes as they now are: it is hereby ordered that the clerk of the county have the said minutes duly engrossed in the said books, and in the manner hitherto practiced in his office."

The promptness with which all the records of the county have been properly engrossed and the accuracy with which they have been kept for the past thirty years by the veteran clerk James W. Horton

is the secret of the hold he has upon the people of this county, outside of party lines, and which has caused his repeated re-elections until he is now serving his eleventh term.

Another common law jurisdiction of this court was the case of the public fisheries, and I find an order entered at the August term 1830, forbidding under a penalty of twenty-five dollars, the taking from Saratoga lake, or any of its tributaries, or outlet, of the fishes known as pike and Oswego bass, by any means within three years from April 1, 1831. Similar rules were entered at subsequent terms relative to the taking of certain other choice species of fish, by other means than fair angling, from Saratoga, Round and Ballston lakes and the pond of the Ballston Spa mill company.

In the year 1818, congress passed an act pensioning the veterans of the Revolution, but its terms were such that but a few of them availed themselves of its benefits. Among those who did so was Sanbun Ford of Ballston Spa, better known as "old Bona," from his ardent admiration of Napoleon Bonaparte, before the latter had expressed his Imperialistic ideas. In 1799, Ford and Henry Goodrich were the only Jeffersonian republican voters in Milton. He died in 1848 aged 95 years. Congress enacted another pension bill June 7, 1832, granting pensions to the survivors of the war for Independence. It was passed mainly through the efforts of our representative, ex-Speaker John W. Taylor, then serving his last term in the House of

Representatives. At the ensuing August term of Common Pleas in this county, certificates that they were the persons mentioned in their discharge papers were issued to Col. John Ball, Judge Salmon Child, Major Ezra Buel, Captain Kenneth Gordon, Thaddeus Scribner, Samuel Downing and one hundred and twelve other revolutionary veterans. At each subsequent term of the court for several years, these venerable men applied for the sum which a generous government had awarded to those who had withstood the mighty throes which gave it its birth. Among others a certificate was granted to David Goodhardt; but it subsequently appeared that although he had "fought at Saratoga," it was in the region led from Hesse by the Baron de Reidesel, and his claim which had been the work of an unscrupulous claim agent, was thrown out. No blame was attached to the aged German who had been a respected citizen here many years, having abandoned Burgoyne's army at Albany, for he was now in his lotage; but the claim agent had a narrow escape from being "put where he would do the most good."

The actions tried in this court were mostly of a light nature, similar to those now tried in the county court, and no material interest now attaches to either the plaintiffs or defendants in connection with their causes of action, so that the field for sketching the workings of the court is necessarily a limited and barren one. The time now approached when the court was to be abolished with all its ancient and time honored machinery. It went, not

“Like the baseless fabric of a vision
And left not a wrack behind :”

for it still exists in the memories of the upright judges who sat on its bench, and in the recollections of the eloquence of its bar. The constitution adopted by the people November, 1846, went into effect January 1, 1847. The old courts of the state were superseded by the new ones established, which were to go into active work July 1, 1847, and all original suits pending in Common Pleas were transferred to the new Supreme Court, and all pending appeals from justices' courts to the new county court.—Therefore, by the direction of Judge Marvin at the close of the April term 1847, on the twenty-first day of the month, crier Hiram Boss sounded for the last time the ancient form : Hear ye, hear ye, all manner of men, this term of the Court of Common Pleas and the Court of General Sessions of the Peace held in and for the county of Saratoga is now adjourned *sine die*.”

CHAPTER IX.

CAUSES TRIED IN THE OLD CIRCUIT COURT.

The first circuit court held in the present court house convened May 25, 1819, with Chief Justice Ambrose Spencer on the bench. Prior to the adoption of the constitution of 1821, the several circuits were successively held by Judges Jonas Platt, John Woodworth and Joseph C. Yates. By the act of the legislature passed April 17, 1823, under the provisions of the constitution of 1821 the state was divided into eight districts, and no changes were to be made in them during the continuance of this court. At least two Circuit Courts and Oyer and Terminers were to be held annually in each county. The constitution provided that the governor and the senate should appoint a circuit judge for each district, with the same tenure of office as the Supreme Court judges; who hereafter were to only have appellate jurisdiction, and their number was reduced to a chief justice and two *puisne* judges. Each of the circuit judges had equity jurisdiction in his own district as vice chancellor.— Under the authority of the constitution and the statute Governor Yates and the senate, April 21, 1823, appointed the following distinguished counselors to be circuit judges, viz: Ogden Edwards,

Samuel R. Betts, William Duer, Reuben Hyde Walworth, Nathan Williams, Samuel Nelson, Enos T. Throop and William B. Rochester.

There are no reported cases that were tried at the Saratoga Circuit under the first constitution during the time embraced in this chapter; but the suit brought by Aletta Beekman against Judge Harvey Granger, which was tried May 29, 1821, before Judge Woodworth, is deserving of mention. It was for damages to the real estate of the plaintiff, situated on the banks of Saratoga lake, by the stoppage of the waters in the outlet of the lake, occasioned by the mill dam of the judge at Grangerville. It was claimed that what is now termed the "drowned lands" was caused by such obstruction. James Scott, the surveyor, performed a singular feat of engineering in surveying the lands thus flooded, by rowing over the courses in a skiff. The principle that water will "pile," or accumulate, by reason of obstructions to its natural course did not then obtain credence among hydraulic engineers, and it being proved that the height of defendant's dam was below the level of the surface of the lake, a verdict was rendered for the defendant by the jury, which consisted of James Dunn, Palmer Cady, Preserved Wait, Ezra Starr, Benj. Carpenter, William Jeffords, jr., Thomas Fellows, Luther Landon, John W. Creal, John Gilbert, William Mills and Cornelius Rowley. John V. Henry and James McKown were the plaintiff's attorneys, and Esek Cowen and Wm. L. F. Warren for the de-

fendant. This question of the "piling" of waters has long been a disputed one among hydraulic engineers. The recent case of Bullard against the Saratoga Victory Company for damages accruing from a stoppage of the natural flow of the waters of the same Fish creek by the defendant's dam was decided adverse to such principle by Justice Landon. The Supreme Court of Vermont went to the opposite extreme from that held in the case of Beekman against Granger, when it pronounced the opinion that a mill dam is an obstruction to the natural flow of the stream, even above a "ripple."

The first Circuit under the new system convened July 28, 1823, with Judge Walworth on the bench. Among the actions tried before him, and in which he enunciated opinions that have since been adopted by the highest courts of the state, and which are still the ruling precedents on the points covered by them, is the suit of James Jackson *ex dem.* John G. Van Schaick against Peter Davis. S. G. Huntington and A. Van Vechten were counsel for the plaintiff, and John L. Viele and Samuel A. Foote for the defendant. It was an action in ejectment brought to recover a part of lot 3 and the whole of lot 4 in the Halfmoon patent. The plaintiff produced a lease executed by Christina Van Schaick and John G. Van Schaick and Anna his wife to Alexander Brevoort (from whom the defendant claimed title) dated January 1, 1784, for the term of seventy years at an annual rental of £4, New York currency. The defendant besides the general

issue plead adverse possession commencing in 1798, since which time neither Davis nor his grantors had paid the rental, nor had such been demanded. Judgment was rendered for the plaintiff, from which an appeal was taken to the Supreme Court. It is reported in 5 *Cowen* 123. The judgment was affirmed. Judge Sutherland, who pronounced the opinion, held with the court below that "when the relation of landlord and tenant was created, immediately or remotely, the succeeding tenant is bound by the acts of his predecessors as by his own. Mere length of time will not raise a presumption of evidence. Mere non-payment of rent, or non-demand of rent for twenty years will not raise a presumption that the landlord's title is extinguished."

At the June Circuit 1824, before Judge Nelson, the ejectment suit brought by James Jackson *ex dem.* Gerrit Bogart against Eliphalet King was tried with a jury. Kirtland & Huntington were plaintiff's attorneys, and Levi H. Palmer and John L. Wendell were the opposing counsel. This was one of a number of suits brought to regain ancestral rights by Gerrit Bogart, whose wife was the granddaughter of Magdalena, or "Peggy" Peltz, who it was claimed was the granddaughter of William Appel, of whom a patent to land in Halfmoon (now Clifton Park) was granted Sept. 10, 1708. The defense in this, and the other suits was adverse possession. The plaintiff's claim of title was sought to be established by proving the records of

marriages and baptisms in the Reformed Protestant Dutch church of the city of New York. By this it appeared that one William Appel and his wife had their son Simon baptized May 26, 1695. Magdalena, a daughter of Simon, was baptized in 1719. She was married to Abraham Peltz, August 25, 1745. She died in 1795. Bogart's wife was thus the fifth in descent from Appel, the patentee.*

The defense objected to this evidence, but it was received by the court. The defense then offered in evidence documents showing that there were two William Appels living in New York in 1695, as tending to show that the Appel mentioned in the church records was not Appel, the patentee. Also, that during the revolution Peggy Peltz told Elsie Van Deusen that all the property she owned was two houses in New York city. At the conclusion of the evidence Judge Nelson remarked that "there were two questions in the case at bar: whether the testimony was competent to prove descent in the plaintiff; and, also, whether there was sufficient in the case to allow it to go to the jury." Both questions he disposed of adverse to the plaintiff, and a non-suit was ordered. An appeal was taken, and a new trial was granted. This case is reported in 5 *Cowen*, 237. Pending this motion for a new trial, another of these Peltz heirs suits, that of Charles Pioneer against David Schaubert was, tried at the June Circuit, 1826, before Judge Walworth.

*From this Gerrit Bogart is descended William H. Bogart, the well known "Sentinel, of the New York *World*."

On hearing the evidence the court directed a verdict for the plaintiff. It was affirmed in the Supreme Court. The several claimants of adverse possessions to this disputed territory then made common cause against their foe and carried this case to the Court of Errors, where the Bogart-Pioneer claims were effectually quashed by the reversal of the decision of the court below. It held that if Gerrit Bogart, who was an attorney in practice residing in Schenectady, but sixteen miles from the lands in question, had held a valid claim of title, he would not have suffered it to lie dormant for over thirty years, while the occupants under a show of title were improving their farms. The case is fully reported in 2 *Wendell* 14.

James Jackson *ex dem.* Thomas Cook against Philip Shepherd, a suit in ejectment involving the validity of a tax sale, was tried at the December Circuit, 1824. John L. Viele, for the plaintiff, sought to establish that the plaintiff make a *bona fide* purchase of lands in Moreau sold at a regularly advertised tax sale, and as such purchaser was entitled to the *desmesne*. Esek Cowen, for the defendant, proved that no demand of the tax was made on the premises, as required by the statute, and that there was personal property subject to distraint thereon at the time of the levy. A non-suit was granted by Judge Walworth, which was sustained on appeal, as will be seen by a reference to 7 *Cowen* 88.

At the Circuit held by Judge Nathan Williams in May, 1828, the libel suit brought by Hon. John

Cramer against Robert Martin and Solomon Southwick was tried. The alleged libel was published in the Albany *Daily Advertiser* and charged Cramer with corrupt practices as a senator. George W. Kirtland associated with him in the prosecution the well known Elisha Williams of Hudson, and the defendants secured the celebrated advocate, Samuel Stevens of Salem. They were among the foremost lawyers of that era of great men. Williams was undoubtedly, physically, the heaviest gun, for he weighed over 300 pounds avoirdupois. The case attracted great attention, not only from the distinction of the parties, and the reputation of Messrs. Williams and Stevens as orators, but from the array of witnesses for the plaintiff to establish a refutation of the charges. It included such men as Elijah H. Kimball, Nicholas B. Doe, George T. Wright, William L. Fish, John C. Spencer, and Ambrose L. Jordan. The defense placed no witnesses on the stand. Mr. Stevens declined to address the jury, but Mr. Williams dealt out to them one of his glittering and eloquent appeals, such as with which he was wont to daze the jurors of Columbia county half a century ago. One of his sentences was the following: "These defendants have brought here before you the most able and eloquent counselor in the state of New York, and this most able and distinguished counselor displays his most admirable eloquence by holding his tongue." Williams carried the audience and jury with him and secured a verdict for \$5,750 and costs.

Cramer wanted but a vindication of his character, and it is said that he never collected his judgment.

The ejectment suit brought by James Jackson *ex dem* John Haverly against Wm. French which was tried before Judge Cowen at his first Circuit, November, 1828, is noticeable for a certain principle decided in it on its appeal to the Supreme Court, as reported in 3 *Wendell* 837. Judge Savage delivered the *dicta* of the court, which incidentally states on one of the points involved, that "the privilege of not disclosing a communication made by a client to counsel is confined to counselors, interpreters and attorney's clerks ; but that a person present at such communication and in nowise connected with the counsel is bound to testify." Loiterers in attorneys' offices will thus see the awkward positions they might be placed in, and should take no offence at being requested to vacate on the appearance of a client. The opposing counsel were Daniel Cady and Marcus T. Reynolds. Cady, for the plaintiff, had a numerical preponderance of evidence at the trial, and the witty and wily Reynolds knowing that he would go to the jury heavy on that subject conceived a plan to outwit him. Coming to this point in his "summing up," he alluded to this discrepancy. To be sure there were five persons who established the plaintiff's case, and but three who sustained the defendant in his rights. Usually, he would allow, when equal advantages were enjoyed by all the witnesses to know the facts the side having the most was entitled

to the point, as his Honor would undoubtedly charge. But there are acceptions to all rules. "For instance, my brother, Warren (the district attorney) and I might differ as to what this (laying his hand on the bare poll of Mr. Cady) is. I should insist that it was a head, as you gentlemen, see that it is. He might declare that it was a squash. We could never reconcile our differences of opinion. We might agree to leave the matter to his Honor, who enjoys equal means of observation with us. Now gentlemen, if my opponent's argument which he is going to make to you is worth a rush, if his Honor should coincide with brother Warren, I should be orced to yield against my better judgment." A burst of laughter followed this sally, in which Cady, the court and jurors joined. Cady did not press that point to the jury and a verdict for the defendant was rendered.

CHAPTER X.

CAUSES TRIED IN THE OLD CIRCUIT COURT, CONTINUED.

The ejectment suit of James Jackson *ex dem.* John G. Van Schaick against Peter Davis, detailed in the preceding chapter, and that brought by the same plaintiff against John Vincent, reported in 4 *Wendell* 633, forms the basis of the established rule of law in this state, as laid down by the Court of Appeals in disposing of the Van Rensselaer "anti-rent" cases, in all their phases. Vincent took a lease from the Van Schaicks, February 28, 1787, for sixty seven years at a rental of £9. The suit was brought in May, 1827, shortly before which time the rent had been demanded and refused. On the trial, John L. Viele for the defendant admitted the taking of the lease. Defendant refused, however, to pay the rent because he had taken warranty deeds for four distinct portions of the farm in question from one Ludlow and three other parties, who claimed the land as lying within their allotment of the Kayaderosseras patent. On this proof and admission Messrs. Huntington & Van Vechten rested the plaintiff's case. The defendant proved that by a survey made under the act of March 11, 1793, passed to adjust certain difficulties between

e Halfmoon, Shanondhoi and Kayaderosseras tentees, the land was shown to be within the bounds of the latter's domain. The plaintiff in rebuttal showed that by that act itself the title of a party who did not sign the petition for its passage was not affected by it in the least. It was conclusively proven that neither of the Van Schaicks signed the petition. Judge Williams, before whom the suit was brought to trial at the May Circuit, 1828, charged the jury that the lease was *prima facie* evidence of title in the lessors, and the defendant having accepted the lease was not to be permitted to deny his landlord's title. And that a tenant for years forfeits his term by refusal to pay rent, and by accepting a claim of title from a hostile source. The latter being a species of rebellion against his liege lord. A verdict was directed for the plaintiff by the court. The defendant moved the Supreme Court to set aside the verdict, but it was denied.

The action which was brought by Amaziah Ford against Col. James Monroe, a nephew of the ex-president, attracted much attention forty years ago. Monroe was president of the Saratoga & Schenectady railroad company, which at the date of this action was in the process of construction. He resided in the city of New York, and was for several years a season guest at the Sans Souci. A servant of Monroe in driving his gig to the hotel one day in the season of 1831, ran over and killed a young child of Mr. Ford, in the street in front of that hotel.

An action on the case was brought by Ford, and tried on the general issue at the May Circuit, 1833, before Judge Cowen. The court charged the jury that the action hinged on the negligence of the servant. The plaintiff should recover, if he should recover at all, for the services of the child, for the consequent illness of his wife, and for the expenses incurred by reason of the death of the child. A verdict was rendered for \$200, which was sustained in the Supreme Court. Oran G. Otis was the successful attorney, and William L. F. Warren, no doubt, fought gallantly at the head of the "forlorn hope" in this action in behalf of Monroe. The case is reported 20 *Wendell*, 210.

Any of the citizens of Ballston Spa, or others who frequented the county seat, whose memories extend back over the lapse of about forty years, will recollect the "Arcade" built by Harvey Loomis, then proprietor of the Sans Souci hotel and the "Low estate," in Ballston Spa. When the Schenectady and Saratoga railroad was chartered and the directors were securing the right of way, Loomis made an agreement with Col. James Monroe of New York, president of the board of directors, giving the company the right of way through the estate for a nominal consideration, and further stipulating that they should stop their cars in front of the Sans Souci hotel. By some means, the latter clause was omitted from the deed of conveyance. This subsequently led to vexatious suits at law. By the article of agreement between Loomis and

Monroe, the former was to construct an "arcade" building on the north side of the railroad track across what is now Low street, in which were to be rooms for the accommodation of passengers, for the storage of baggage, and for offices for the use of the company's agents. Loomis fulfilled his part of the contract, but the board of directors refused to ratify the agreement of their president, and built a passenger depot on the west side of Bath street, opposite where Marsden's hotel now stands, at which point they stopped their cars, instead of in front of the Sans Souci. Loomis then began an action against the railroad company to recover the moneys expended by them in building the "arcade." The suit was brought by his son Joseph H. Loomis and Cicero Loveridge, his attorneys. Alonzo C. Paige, afterwards the distinguished judge and attorney, for the company. The suit was brought to trial before Judge Cowen at the May Circuit, 1834. The plaintiff declared in *assumpsit*, and the defendant plead *non assumpsit*. The evidence for the plaintiff was his agreement with Monroe. The defense proved by the books kept by their secretary that the proposition made by Monroe was not adopted by the directors, nor was he authorized to enter into such an agreement. The court entered a nonsuit on the motion of Mr Paige. Loomis then brought an action against Col. Monroe, individually, to recover his money. A demurrer was entered and it was argued in the Supreme Court by Mr. Page for, and Mr. Loveridge *contra*. From

the plaintiff's points, as reported in *Howard's Appeal Cases*, page 22, it appears that he endeavored to show that he offered to give free right of way through his lands to defendant if the company would erect their depot in Ballston Spa in front of his hotel. Defendant agreed that the depot should be so built, and agreed with plaintiff that the latter should construct the same, and that if the company failed to make the payment for it, he would pay the same. The defendant claimed that the undertaking on his part was collateral and not original, and that his promise to pay was without consideration. The court held that the pleadings showed no request on the part of defendant to plaintiff to build the "arcade" for him, and sustained the demurrer. An appeal was taken to the Court of Appeals and the decision was affirmed. The final decision is noted in *Howard's Appeal Cases* page 28. The unlucky "arcade" stood for several years in a dilapidated state, an eyesore to all parties. Its fate, like that of the famous Ephesian temple, was somewhat tragical. The name of the constructing architect in each instance is lost to human ken :

"The youth who fired the Ephesian dome.

Outlives in fame the pious fool that reared it."

Erostratus has come down the stream of time as the crack-brained youth who burned the temple, and be it the office of these pages to commemorate the name of Thomas Staats, who solved the

“arcade” question by blowing the structure up, or rather down, with a blast of gunpowder.

The next important case tried at the Saratoga Circuit was the suit brought by Minor S. Lincoln, a gentleman from Boston, against the Saratoga and Schenectady railroad company. This was an action on the case for negligence on the part of the defendant's servants. It was tried at the December term, 1837. Messrs. Anson Brown and John W. Thompson were attorneys for the plaintiff, and Platt Potter of Schenectady defended the interests of the company. Lincoln was a passenger on the train from Saratoga Springs to Schenectady August 31, 1836. A short distance from Ballston Spa the train came in collision with another coming from Schenectady. Plaintiff sprang off the cars and in falling fractured his leg. He was unable to return to his home until the first of December. He proved actual expenses to have been \$690, and asked exemplary damages for his long and continued pain, and for his detention from business. Judge Willard in his charge to the jury held that the plaintiff was entitled to recover his actual damages, and they must consider his loss of reasonable profits of his business, but not any fanciful figures or conjectures as to the same. A verdict was rendered for \$8,000 and costs. A motion for a new trial was made in the Supreme Court. It was argued for the motion by Samuel Stevens, and opposed by Nicholas Hill, jr. The motion was granted, the court holding that the negligence of the agents of the company should

have been shown, and that opinions of witnesses as to Lincoln's damages from loss of time was inadmissible. It is reported in 22 *Wendell*, 425. A compromise was then effected by the company's agreeing to pay \$5,000; which Lincoln accepted and the suit was withdrawn.

Next we come to the noted "Rector trial," which besides the other points of interest attached to it was probably the only criminal trial in the state, if not in the English speaking courts, where a man was tried for his life in the Circuit court, instead of the Oyer and Terminer. The prisoner, Thomas Rector, had previous been tried in the Albany Oyer and Terminer and convicted of murder in the first degree. A new trial was ordered on appeal, and on a *certiorari* the Supreme Court ordered Rector to be sent to the Saratoga Circuit for trial. Judge Willard insisted that he should try the indictment as circuit judge, and did so. The event of the suit precluded an appeal from his decision. Accordingly at the May Circuit, 1839, Rufus W. Peckham, district attorney of Albany county, moved the trial of Rector. He was assisted by Attorney General Willis Hall and Samuel Stevens. The prisoner was defended by Henry G. Wheaton and Ambrose L. Jordan. The notoriety of the case and the ability of the counsel caused the court room to be crowded during the eight days of the trial. After a thorough examination of a long special panel a jury was accepted consisting of David Hodges, Lewis Stone, Lansing Holmes,

Joseph A. Sweet, Pardon Elms, George Thompson, Henry Patrick, John Rouse, Charles Patrick, Sylvester Blood, Thomas Arnold, jr. and William Mitchell. From the evidence it appears that between twelve and one o'clock on the night of March 11, 1838, Robert Shepherd and two men named Wilson and Whitney went to a bawdy house in Albany, kept by Georgianna Rector, mistress of the prisoner. They were intoxicated and Georgianna refused to let them enter the house. They declared that they would go in. The prisoner came to the door, and seizing the door bar struck Shepherd on the front part of the head. He fell to the sidewalk; and was taken to a surgeon's and died the next day. The evidence of the surgeons showed that there was a gash on the front of the scalp and that the skull was fractured near the base of the brain. There was no evidence of a second blow. The defense was that Shepherd died from the effects of the fall. Thirty-six witnesses were sworn for the people, and twenty for the prisoner. Among the distinguished surgeons sworn were Drs. March, McNaughton, Vanderpoel and Peter P. Staats of Albany, and Dr. Valentine Mott of New York. The jury convicted him of manslaughter in the second degree. He was then remanded by Judge Willard to the Albany Oyer and Terminer in which he was subsequently sentenced to state prison for seven years. Rector in his boyhood lived at Court House Hill in this county. The expenses of his trial were borne by his brother, Henry Rector, a

distinguished architect of New York city. The first trial of Rector and the argument in the Supreme Court are reported at length in 19 *Wendell*, 569. The result of the trial in this county was owing to the obstinacy of one juror. On their first ballot they stood, I am told, eleven for murder in the first degree, and the other, the late Judge Stone of Galway, for a conviction of a minor crime. Finally the eleven deferred to his judgment, and thus the determination of Judge Willard to sit *solus* in a criminal trial was never reviewed, for Rector was glad to escape with the light punishment he received for his crime. Whether, as probably was the case, it was a clerical error that named the Circuit instead of the Oyer and Terminer in the order changing the *venue* must ever remain in doubt.

CHAPTER XI.

CAUSES TRIED IN THE OLD CIRCUIT COURT, CONCLUDED.

The philosopher of the *Tribune* in his graphic "Record of a Busy life" gives a full history of the several law suits which his trenchant pen drew upon him. His caustic criticisms of the men and times in which he lived were a terror to thin skinned politicians and nervous writers. Among those suits was the one brought by the well known author of the "Leather Stocking" series of novels, which thirty years since commanded great attention in the literary world and gave their author an extensive prominence. J. Fennimore Cooper was of a haughty imperious temperament, and the sharp manner in which the *Tribune* criticized both the man and his literary labors galled him severely. To obtain redress, he commenced a libel suit against Horace Greeley and Thomas McElrath, the proprietors of the *Tribune*, laying his damage at \$10,000. The suit was brought by his nephew, Richard Cooper, an attorney of great celebrity. The *venue* was originally laid in Otsego county, the home of Cooper. Pending a motion to change the *venue* to the county of New York it was finally stipulated that the cause should be brought to a

trial before the farmers of Saratoga county. The selection was satisfactory to both parties. Cooper hoped that the impression made by laying the scenes of the "Last of the Mohicans" in this locality would tell in his favor, for the work was then fresh in the minds of the novel reading public. But Greeley trusted to the reputation he had made among the yeomanry as the editor of the "*New Yorker*" and the "*Log Cabin*." The reliance that Greeley always placed on the farming community was never misplaced, for it was one of the secrets of the great success of the weekly edition of the *Tribune*. Having sprung from a race of tillers of the soil he ever recognized the solid worth of their judgments. The suit was brought to trial at the December Circuit, 1842, before Judge Willard. During Greeley's attendance at the court in Ballston Spa, he had his quarters at a boarding house kept by the late Chester Stebbins, in the residence now owned by Joseph E. Westcott on Front street. Stebbins had been jailor under Sheriff Jennings, and was noted for his influence with jurors. Although an ardent democrat, he had conceived a strong attachment for the great Whig writer, and doubtless lost no opportunity to vent his opinion in public during the trial. The plaintiff's case was opened to the jury in a methodic, straight-forward manner by Richard Cooper. The evidence for the plaintiff, copies of the *Tribune* containing the articles offensive to the Cooper eyes and ears, was then read to the jury. The defendants offered no

evidence in mitigation of damages. But Horace Greeley's confidence in his countrymen's love of justice was never shaken to the end of his life; unless it might have been in that sad hour when his wearied and dazed brain gave way as he comprehended the duplicity that had been practiced on him when he was a candidate for the highest office in the gift of the people. He managed the case of the defendants in person, and appeared in the trial without the aid of counsel. He opened and closed his case to the jury in a speech abounding in earnest arguments disclaiming the intention of injuring unnecessarily the reputation of Mr. Cooper, and pleading the paramount duty of independent journalists to criticise and condemn all that was censurable as being detrimental to the interests of the great public, let the consequences be what they may. His earnest manner, the quaint drollery of the man, and his appearance before the jury made him many friends in this county, even among those who strongly opposed his political principles.

The great novelist, who had been bred to the bar, and who possessed no mean oratorical talents, followed and presented his case to the jury in an address full of glowing periods, and triumphantly demanded that the libellers of his fair fame should be mulcted in heavy damages. As he sat down the opinions of some of the spectators were that the "pioneer author of American fiction" was the best abused man in the country, and that Greeley and McElrath were the most unblushing blackmailers

on the face of the earth. Judge Willard charged the jury that as the publication of the alleged libelous articles was proven, it was their province to measure the damage done to the reputation of Mr. Cooper. This they did by awarding him a verdict for \$200 and six cents cost. This was regarded in all quarters as a substantial victory for the great editor. Mr. Greeley's last visit to Saratoga county was on the occasion of his delivering an address before the Agricultural Society at Saratoga Springs in September, 1869.

No one, who in these later years knows the venerable John S. Ford of Ballston Spa, and sees him to be a plain, easy going matter of fact citizen, would ever dream that he had ever been the cause, in a perfectly innocent way, of the incorporation of a certain section in the present constitution of this state. That he was, let the following facts demonstrate. Mr. Ford has for many years been the owner of the track of land in the east portion of that village known to all the villagers as "Bona's woods." Wishing in the year 1840, in connection with Thomas J. Porter (who was a joint proprietor then with him in the premises,) to improve said lot which did not lay upon a public highway, they sought to open a private road to it through the adjoining close of Thomas C. Taylor. Taylor's agent, Thomas G. Young, refused to grant them the coveted privilege, so they applied to the highway commissioners of the town of Milton. That nobody entered an order July 24, 1840, granting

them the proposed relief. Ford and Porter then entered on the lands of Taylor and proceeded to lay out the proposed private road. An action in trespass was commenced. The plaintiff was represented by Daniel Lord, Jr., and George G. Scott was defendants' attorney. To defendants' answer the plaintiff entered a demurrer that the statute authorizing the laying out of private roads was unconstitutional and void. The demurrer was argued before the Supreme Court at Rochester, in October term, 1842 by George H. Mumford of Rochester, in support, and Nicholas Hill, Jr., in opposition. Greatly to the surprise of the latter, the unconstitutional feature was sustained by Judges Bronson and Cowen. Chief Justice Nelson wrote a dissenting opinion which is published along with the opinion of the court (which was written by Judge Bronson) in 4 *Hill* 140. Judge Nelson thought if it was by an oversight not a part of the *lex scripta*, it was a part of the great unwritten law of the state. He emphatically stated that ours was the only state in the union, if not in the civilized world, that had not a constitutional provision authorizing private roads. Judge Nelson was one of the members of the constitutional convention of 1846, and in that body took an early occasion to remedy this defect in the constitution of 1821, by securing the adoption of the seventh section of the first article of the present instrument, from which our courts derive their powers to adjudicate the differences of citizens relative to property. It dis-

tinctly points out the way in which private property can be taken for the use of another in a constitutional and common sense manner. Thus, while Ford's woods still remain in their original sylvan state, his name should be linked with the adoption of this constitutional privilege, which is of so frequent application in these days of steam and progress. The case was tried on its merits at the December Circuit, 1844, and the jury assessed the plaintiff's damages at twenty dollars. A subsequent survey showed that Taylor's fence was inaccurately placed upon the highway line and that Ford and Porter's land had a frontage on the same of about thirty feet. This rendered a resort to the new constitutional provision nugatory. A feature connected with this case may be cited to illustrate the wide difference in the expense of litigation under the Code, as compared with that under the old Common Law practice. In these days when we read of fees ranging from \$500 to \$10,000 for arguing a case before the Court of Appeals, one may well be astonished to learn that Mr. Hill's fee for the argument of this case was only *five* dollars.

In 1841, the heirs of Peter R. Kissam, by John Brotherson, their attorney, began a suit in ejectment against James Jones and others to recover two eighty acre lots in the fifth allotment of the patent of Kayaderosseras, and lying within the bounds of the present town of Clifton Park. Kissam was a descendant of Peter Rutger, who inherited the estate of Adrian Hooglandt, one of the

original patentees, and succeeded to the title of the lands in question by inheritance from him. It was alleged that Kissam died seized of the title and that it thereupon descended upon to the present plaintiffs. The suit thus brought was destined to occupy the attention of the Circuit and Supreme Courts and the Court of Appeals for over thirty years. The defendants who occupied the premises under show of title from Noah Taylor, made a vigorous defense of their rights, as they claimed. The lots in question were designated as "A" and "B." The village of Jonesville is built upon the former. Upon the first trial, before Judge Willard, it appearing that the defendant had been in possession since 1797, a nonsuit was entered. The higher court sent it back for a new trial, holding that a jury must pass on the question of adverse possession, it being a question of fact. In 1845, Jones having sold the premises to Elisha G. Shepherd, each of the heirs brought a new suit against him. We will follow the history of that in which Eliza A. Vrooman was plaintiff, as giving the details of these protracted suits. Peter R. Kissam died in 1799. His daughter, Catharine, married Philip Brotherson in 1801, and was the mother of the claimants. At the date of her marriage she was under twenty one years of age. She died in 1822, and Brotherson in 1854. Taylor had purchased the lands from William Brayton in 1797 and sold them to Jones about 1800, and died in 1802. The courts held that if Taylor did not sell until after September, 1801, the statute of

limitations would not run against Mrs Brotherson during her coverture, and that her husband had a life estate in the property. After his death other suits were brought, making nineteen in all, each heir claiming 1-100 of the lands in dispute. Although the defendants and their ancestors and grantors had been in possession for half a century they were liable to lose their land, because this decision settled that a wife's coverture worked against adverse possession. It also exploded two other popular delusions: viz. that a party must have a deed in order to secure title by adverse possession; and, also, that if a party has been in possession for twenty years under a deed, the title becomes perfect. Several very old gentlemen were sworn, and their recollections as to the Taylor-Jones purchase were very conflicting. With such evidence three juries found in favor of the plaintiff. Two verdicts were set aside, but that rendered at the September Circuit, 1861, was sustained, and a final judgment was entered in Saratoga county, July 12, 1875, by a *remittitur* from the Court of Appeals, awarding Mrs. Vrooman \$490 as her portion of the value of the real estate in suit. Shepherd and Mrs. Vrooman are both dead, and proceedings are pending between their representatives to offset Shepherd's costs in former suits against her judgment. Suits brought by the other heirs against Shepherd and Eliphalet King are yet pending in various stages. Brayton's title on which the defendants relied was founded on an unrecorded deed from Benjamin

Kissam to him, dated 1794. Benjamin Kissam was a brother of Peter R., and a co-heir in the estate. He was a noted New York lawyer of the last century. Alexander Hamilton studied law in his office. He was an ancestor of Gov. Hoffman. This deed was found in a garret in Jonesville, after the first suit, and the plaintiffs stoutly maintained that it was bogus, for, if genuine, it was fatal to their case by supplying the missing color of title on which to base adverse possession in the defendants in the several suits. The plaintiffs were represented by John Brotherson, William McMurray, William Hay, Daniel Cady, Azor Tabor and other distinguished lawyers. The defendants had the services of Chesselden Ellis, David Buel, John K. Porter, I. C. Ormsby and Gen. Bullard. All the original parties are dead, and also many of the second generation ; and death has made several inroads into the list of counselors engaged in it. But this legal duel of over thirty years duration has been mainly conducted by Messrs. Brotherson and Bullard.

The constitution of 1846 having dissolved the Circuit Court as it then existed, on the 26th of May, 1847, Judge Willard dismissed the term, and Mr. Horton made the following entry in concluding the minutes: "Court adjourned *sine die*. The last term held under the old constitution."

CHAPTER XII.

THE SARATOGA BAR UNDER THE OLD CONSTITUTION.

The officers and private soldiers of the famous Seventy-ninth Regiment Scotch Highlanders are wont to boast that though they may not individually have performed acts of valor on the ensanguined field, yet never has their plaid been dishonored in any of the battles of the last two centuries where it has rallied to the charge under the banner of St. George. At Fontenoy and Blenheim, on the Spanish peninsula and at Waterloo, on the Crimea and before Lucknow their pibroch sounded the blasts of victory, and as the soldier of to-day reads the tales of the brave deeds of his predecessors under the folds of the regimental colors he resolves anew to emulate their valor.

So should the present members of the Saratoga county bar as they read the life stories of the earnest men of by-gone days who gave to it a state and national reputation nerve themselves anew to devote their whole energies to their noble profession. As we have followed the history of the courts, we have read the names of the intellectual giants who have plead at its bar. Since the era of the present court house we have noted the distinguished counselors

who have appeared on the minutes in connection with trials had in the several courts. But there still remain others of whom our county should be proud, who entered upon a successful practice after an admission of our Common Plea.

By the rules of the old practice attorneys' clerks had to serve a full apprenticeship of seven years to the law before they could aspire to admission to the bar of the Supreme Court. A college diploma was afterwards decreed to be a substitute for four years of this course of study. Those who did not thus take the classical door could enter the forum through a term of five years served in practicing acceptedly at the bar of Common Pleas until they were sufficiently educated in the law to entitle them to the degree of attorney and counselor. By reference to the roll of admission of attorneys to the Common Pleas bar in this county and the minutes of the several courts it will appear that in the first decade after the building of the court house in Ballston Spa the leading attorneys were Azariah W. Odell, Samuel Young, Alpheus Goodrich, Oran G. Otis and Thomas Palmer of Ballston Spa ; Richard M. Livingston of Schuylerville ; William L. F. Warren, Aaron Blake and Esek Cowen of Saratoga Springs ; Joshua Bloore, Joshua Mandeville, Nicholas B. Doe, George W. Kirtland, John L. Viele, Samuel G. Huntington and the Van Schoonhovens of Waterford ; Wessell Ganzevoort and the farmer lawyers, William and John Metcalf, of Northumberland ; and George Palmer of

Stillwater. At the January Common Pleas, 1823, on motion of Mr. Huntington, William Hay, jr., of Glen's Falls, was admitted to our county bar. He subsequently removed to Ballston Spa and afterwards to Saratoga Springs, where he took and maintained a front position in the legal profession. At the April term, 1824, Judiah Ellsworth and John L. Koon took the oath of office as attorneys. Mr. Koon was a cousin of Dr. Morgan Lewis of Ballston Spa, and of the late John Lewis of Schuylerville. He was famous for his great muscular strength. He had an office for some years at Nassau, and was district attorney of Rensselaer county from 1836 to 1839. He afterwards removed to Albany, where he practiced law until his death. Mr. Ellsworth was a successful lawyer at Saratoga Springs for many years and was quite noted as a whig politician. He was appointed examiner in chancery in 1828 and master in 1832, and represented the second district of this county in the legislature of 1860. He is yet a hard working lawyer living at Luzerne, Warren county. In April, 1825, Tayler Lewis of Fort Miller was admitted. From the minutes it appears he soon gained a good practice, which, however, he relinquished and became Prof. Lewis of Union College. The law lost an able and eloquent advocate in giving to the field of *belles lettres* the first American Hebrew scholar of the age. Michael Hoffman, the Ajax of the Herkimer county bar, was a native of Halfmoon and in the early professional career practiced in this

county. Alvan Worden, of Ontario county, was a native of Milton. After an admission to the bar in this county he removed to the western part of the state, where he attained popularity and fame. He was a member of the legislature for several years, and served in the constitutional convention of 1846.

At the April term, 1826, Anson Brown and Clark S. Grinnell were sworn as attorneys. Mr. Brown entered upon a good practice in Ballston Spa. In 1838, he was selected to congress, and died June 14, 1840, at the early age of 40 years. Mr. Grinnell enjoyed a fine field for practice in this and Fulton counties, living at Northampton, after his removal from Providence. The name of Judge Deodatus Wright appears as his having been admitted in 1827. (I learn, incidentally, that Judge Wright while a student at law tried a cause in the old court house, by the grace of the court, previous to 1816.) While living in Albany he attained a wide celebrity both as a jurist and an advocate. Few are aware, however, that he was a native of Charlton in this county. Chesselden Ellis of Waterford, afterwards member of congress, was admitted in April, 1829, and Judge Thomas J. Marvin in August of that year. At the April term 1830, on exhibition of their certificates from the Supreme Court Nicholas Hill, jr. and John W. Thompson were sworn as attorneys in this county. Mr. Hill began his practice at Amsterdam, and soon after removed to Saratoga Springs. After several years he established himself at Albany as

a member of the eminent legal firm of Hill, Cagger & Porter. Mr Thompson began the practice of the law under favorable auspices. He was surrogate of the county for thirteen years from 1834. For many years he has been engaged in banking as president of the Ballston Spa National Bank. Older members of the bar and other citizens of the county will remember the eccentric George T. Wright, "Orator," of Clifton Park, who was admitted in 1831 on proof of loss of his certificate. Judge John A. Corey and James B. McCrea were received at the bar in December, 1831, and Seymour St. John, afterwards a judge of Common Pleas, in April, 1832.

On the twenty-ninth day of August, 1833, on report from his examiners, Messrs Brown and Kirtland, William Augustus Beach was admitted to practice and signed the roll of attorneys. He early took a front position at the bar of the Supreme Court, to which he was in due time admitted, and whether as a member of the successive legal firms of Beach & Bockes, Saratoga Springs; Beach & Smith, Troy; or Beach & Brown, New York, he has ever been considered one of the most gifted sons of Saratoga county. In August, 1834, Cicero Lovelidge and Joseph W. Loomis entered the forum. After practicing for several years at the county seat Loomis removed to Syracuse. In April, 1834, Benjamin H. Austin and James M. Andrews of Saratoga Springs were admitted after due examination. Mr. Austin removed to Buffalo, but Mr.

Andrews remained at Saratoga Springs, leading a rural life rather than one of devotion to his early profession. At the December term of the same year, George G. Scott of Ballston Spa was admitted on certificate from the Supreme Court. He served on the bench of Common Pleas from 1838 to 1841, when he resigned and resumed to the practice of his profession, which he has since continuously followed. He has been twice member of assembly, has served one term in the state senate and for seventeen successive years has been supervisor of his native town.

In December, 1836, Sidney J. Cowen and Abel Meeker were examined and admitted to practice. Mr. Cowen was a young man of signal ability, and his early death robbed the bar of one of its brightest ornaments. Mr. Meeker served as a magistrate several years in Ballston, and is now a resident of Rochester. John C. Hulbert, Richard B. Kimball and Thomas Rogers also sustained a good examination and were sworn as attorneys. Hon. Martin I. Townsend of Troy, made his first appearance in our county courts at the same term. Mr. Hulbert has since been surrogate and county judge, and Mr. Rogers, (who was a step-son of Judge Cowen) took a prominent position at the Iowa bar. Mr. Kimball, after a few year's practice at Waterford, removed to New York and turned his thoughts into the more congenial field of literature. Several excellent novels have emanated his pen, of which "St. Leger" is the most generally known at this

day. His brother, Elijah H. Kimball, was a member of the legal firm of Doe & Kimball for several years, and then gravitated to the metropolis where he took quite a prominent place at the bar. At the August Common Pleas, 1838, Cyrus K. Corliss and Orville J. Harmon took the official oath. Mr. Harmon has since been Recorder of the city of Oswego. For several years he has been deeply interested in Sunday school work.

At the April term, 1839, John K. Porter and William T. Odell presented their certificates from the Supreme Court and were admitted in Common Pleas. Mr. Porter entered immediately on a lucrative practice in Waterford. Several years later he removed to Albany, having formed a law partnership with Nicholas Hill, jr. and Peter Cagger. Having twice been elevated to the bench of the Court of Appeals he, in each instance, resigned his seat and returned to his large professional duties. He now resides in the city of New York, and, as a member of the legal firm of Porter, Lowry, Soren and Stone, his clientage is probably one of the best in the country. Perry G. Ellsworth was admitted to the bar of this county in December, 1840. A few years later he removed to Plattsburg, where he was elected county judge of Clinton county. Subsequently he made his residence in Ithaca and has since served a term as judge of Tompkins county. Gen. Edward F. Bullard's experience as a lawyer dates back to April, 1841, having been admitted at the same time with Callender Beecher, Orville

Chittenden and William T. Seymour. Mr. Beecher was one of the "Argonauts of '49," and early fell a victim to the malarial fevers of Colifornia. Another gifted son of Saratoga who fell a victim to the "California fever" was John H. Beach, a brother of William A. Beach. He died in San Francisco in 1850, and his remains lie in the Yerba Buena cemetery. He was a young man of excellent talent. Mr. Chittenden has since served one term as surrogate of Albany county. Mr. Seymour turned his attention to banking and was for many years cashier of the Saratoga County Bank at Waterford. He was sheriff of this county in 1852-3. At the August term, 1841, Francis S. Waldron of Waterford was admitted to practice. He formed a law partnership with John K. Porter which continued until the latter's removal to Albany. Mr. Waldron is a gentleman of quiet habits, retiring manners and of a literary turn of thought. Possessed of a fair fortune, he devotes his time rather to study than the practice of his profession. Nevertheless he has a clientage who place strong reliance on the sagacity and soundness of his counsel.

Among the sons of Saratoga county who have gained distinction at its bar and conferred renown on it in return is Judge Augustus Bockes, who was admitted after examination in due form at the April term of Common Pleas in 1842. The late Thomas G. Young, and Henry W. Merrill of Saratoga Springs, and Stephen P. Nash, now of New York city, were admitted in August, 1842; and J.

Oakley Nodyne, and Jacob W. Miller of Cohoes signed the roll in December of that year. Mr. Nodyne was at one time editor of the *Ballston Journal*, and afterwards removed to Brooklyn. Col. Miller established an office in Cohoes, in which the author served his clerkship. He was a man of good talents and was deeply read in the law. Col. Benjamin C. Butler and David Maxwell are now popular summer resort hotel keepers at Luzerne and Corinth, N. Y., yet, nevertheless, they are both entitled to practice before the bar of justice; Butler having been admitted in August, 1843, and Maxwell in December, 1845. Aaron B. Olmstead of Saratoga Springs, dates his legal practice from December, 1843, and the late Franklin Hoag of Oil City, Pa., and Augustus Haight, now of Oshkosh, Wis., were admitted in April, 1844. The late John Lewis of Schuylerville, and John Brotherson were admitted to the Common Pleas in April, 1845. The latter on his certificate from the Supreme Court, he having been in practice for several years previous in Schenectady. Since that date he has made his home in Ballston Spa. Mr. Brotherson enjoys an equally good reputation as a lawyer and a fox-hunter—never leaving the chase until the brush adorns his game pouch, or he has effectually holed his adversary.

Major Patrick H. Cowen and the late Hon. John H. White of Saratoga Springs, United States Commissioner John T. Lamport of Troy, and the late Samuel H. Cook of Ballston Spa, were admitted on

the report of the examining committee in September, 1845. Ex speaker Truman G. Younglove of Crescent, was made an attorney at law in April, 1846; and on examination at the September term of that year Murray Hubbard of Waterford, and Nathan J. Johnson of Ballston Spa, were admitted to practice in Common Pleas. Mr. Hubbard practiced law for several years successfully in Cohoes, and then became cashier of the Cohoes bank, which position he yet retains. Mr. Johnson has since been a professor in Fowler's law school and Judge of Fulton county. He served gallantly as a regimental and brigade commander in the late war, as his honorable wounds attest. The last class examined and admitted was in the December Common Pleas, 1846. It consisted of Albert A. Moor, John A. Bryan, William E. Castle, Amos S. Maxwell, William C. Tibbetts, Charles R. Sanders and Isaac C. Ormsby. Mr. Moor is now a manufacturer living in Greenwich, Washington county; John A. Bryan is a member of the legal firm of Therasson & Bryan, New York city; William E. Castle was a cousin of Hon. Wm. A. Beach, and is since deceased; as is also William C. Tibbetts, who was a son of the late Dr. William Tibbetts, of Mechanicville. Mr. Ormsby is the present district attorney, whose fitness for that important office and his popularity are attested by his repeated re-elections by the people.

At this point, it is proper to digress from the chronological order and bear testimony to the

merits of a son of Saratoga and a talented member of our early bar. Hon. John W. Taylor was born in Bal'ston, (now Charlton) March 26, 1784. He was the son of Judge John Taylor. After graduating from Union college in 1803, he studied law and established an office in connection with Samuel Cook at Court House hill about the year 1806. They afterwards embarked in the lumber trade and Mr. Taylor removed to Jessup's Landing in Hadley, (now Corinth) to superintend the business. In 1811, he was elected to the state assembly and was re-elected the next year. In the fall of 1812 he was chosen to represent the eleventh district (Saratoga county) in the thirteenth congress. He removed, soon after, back to his former residence, and in 1819 to the house now occupied by Justice John Brown in Ballston Spa. He was elected to congress for ten consecutive terms. Mr. Taylor was twice chosen speaker of the house of representatives; first of the sixteenth congress, in 1821, for the second session to succeed Hon. Henry Clay, who had resigned his seat; and, again, in 1825 of the nineteenth congress, for the full term. In 1840 he was chosen state senator and served until August 19, 1842, when he resigned. He subsequently removed to Cleveland, Ohio, where he died September 18, 1854. His remains are interred in the cemetery at Ballston Spa, and a plain slab, modestly inscribed with his name and dates of birth and death, marks the last resting place of the venerable statesman, who was the only citizen of New York

who ever held the third place in our government.

The interests of non-resident clients drew to the courts of our county the legal talent of the other counties of this state. In addition to those mentioned in the preceding chapters in connection with the suits in which they appeared, the following gentlemen may be mentioned, many of whom gained a world-wide celebrity at the bar, and others who have sat on the bench and administered justice under the laws with credit to themselves and signal honor to the state. From Albany came Joseph W. Paddock, James Edwards, Israel Williams, Henry C. Whelpley, and Bradford R. Wood; Schenectady sent Edward Yates, Archibald L. Linn, Stephen A. Daggett, Alex. C. Gibson and Demetrius M. Chadsey; Rensselaer county sent from Troy Job Pierson, David L. Seymour, Judge George Gould, Cornelius L. Tracy, Gardner Stow, Francis N. Mann and Enoch H. Rosekrans. Judge Stow was a native of Moreau, and with Dr. Billy J. Clark and Rev. Lebbeus Armstrong formed the first temperance society in this county. He was some time district attorney of Essex county, and afterwards removed to Troy. He was appointed attorney general in 1853, by Gov. Seymour. The two latter are natives of this county; the former of Milton and the latter of Halfmoon. Judge Rosekrans subsequently removed to Glen's Falls, whence also came Ira A. Paddock, Halsey R. Wing, Isaac Mott and Orange Ferriss. From Chester, Warren county, came Norman Fox, who afterwards entered

the ministry and was for many years pastor of the Baptist church at Ballston Spa. From Amsterdam came Clark B. Cochrane and David P. Corey ; from Sandy Hill, Roswell Weston, Joseph B. Lathrop, Orville Clark, Charles Hughes and Henry B. Northrup ; from Johnstown, James McNeice, Duncan McMartin, McIntyre Fraser and Horace E. Smith ; from Poughkeepsie, Richard D. Davis and John V. N. Radcliffe ; from Rochester, Judge Samuel L. Selden, George G. Munger and Nathaniel Bacon. Judge Bacon was a native of Ballston. He ultimately removed to Niles, Michigan, where he ranked as an able jurist. Dudley Burwell of Little Falls (who married the eldest daughter of Colonel Samuel Young, and is but recently deceased), Marcellus Weston of Broadalbin, John C. Spencer of Canandaigua, John Cochrane and Erastus Benedict of New York, also were among those who have stood before juries of Saratoga county under the old constitution and presented their client's cases with all their powers of eloquence, argument and casuistry.

With this chapter closes the history of our courts under the old constitution. The old practice with its interminable inventory of pleadings from the declaration to the surrebutter, its legal fictions and feigned issues, passed away July 1, 1848, and the imagined simpler forms of the "Pleadings under the Code of Procedure" took its place. Wherein is the improvement will be better told in the twentieth century, by which time the successive legisla-

tures will have amended the "perfect code," until it will resemble the wonderful pair of stockings, which the old lady made to serve her husband for fifteen years by knitting new feet every spring and new legs every other winter.

CHAPTER XIII.

CRIMINAL TRIALS UNDER THE PRESENT CONSTITUTION.

The legislature acting under the provisions of the new constitution passed an act May 12, 1847, providing for the several courts, civil and criminal. First, there was to be the Court of Impeachment, consisting of the Lieutenant Governor, state senate and Judges of the Court of Appeals. Secondly, there was created the Court of Appeals, consisting of four judges to be elected by the people and four judges designated from the justices of the Supreme Court. Thirdly, the Supreme and Circuit Courts, to be held by the thirty-three justices of the Supreme Court. Fourthly the County Court, to be held by the county judge. Fifthly, the Court of Oyer and Terminer to be held at the times appointed for holding Circuits, by the presiding justice of the Supreme Court, with the county judge and two justices of the peace designated by the people at the annual elections to hold Courts of Sessions. Sixthly, the Courts of Sessions to be held at the same times designated for holding County Courts, by the county judge and justices of sessions. The new Criminal Courts succeeded to the powers and duties of their respective predecessors, with the

right of appeal from their judgments first to the Supreme Court at General Term, and ultimately to the Court of Appeals, by bills of exceptions, writs of error, or *certiorari*. The jurisdictions of the Court of Appeals, Supreme, Circuit and County Courts will be noticed in the succeeding chapter devoted to civil causes tried in our county.

Hon. Augustus Bockes of Saratoga Springs, having been elected county judge at the special election held June 7, 1847, to elect the new judiciary of the state, the first County Court and Court of Sessions was held by appointment September 20, of that year, with justices William T. Seymour and Abel A. Kellogg assisting in the latter. John Lawrence, the newly elected district attorney, appeared as public prosecutor. No criminal trials were held at this term. Neither were there any had at the first Oyer and Terminer held by Justice Alonzo C. Paige, County Judge Bockes and Justice of the Sessions Seymour, in November following; or, at any of the succeeding terms of these courts until the August Oyer, 1848. This term was presided over by Hon. John Willard, who had been elected a justice of the Supreme Court, for the Fourth district, along with Daniel Cady, Alonzo C. Paige and Augustus C. Hand. Thomas Hynde was brought to trial for arson in the second degree for setting fire to and burning the cotton mill of James V. Bradshaw, on the Anthony's kil, near Mechanicville. District Attorney Lawrence appeared for the people, and Messrs. Amos K. Hadley and W.

H. King, of Troy ; Deodatus Wright, of Albany ; and G. W. Kirtland, of Waterford, for the prisoner. It was a case of circumstantial evidence against the prisoner, who was a discharged employee. He succeeded in proving a satisfactory *alibi*, and was acquitted. At the February Oyer, 1849, the Waterford and Whitehall Turnpike Company was indicted and convicted for maintaining a common and public nuisance. The conviction was affirmed by the Supreme Court, and its opinion is reported in 9 *Barbour* 160. This company was subsequently indicted for the same offense by several grand juries, but continued to neglect to observe the statute in all respects, except the collection of tolls, until in 1863 a mob tore down their remaining toll gate, near Waterford, and then it yielded its ghost of a claim to exact taxes from wayfarers for passing over a highway they entirely neglected to keep in proper repair. In its later years it was known as the Stillwater and Waterford turnpike.

The October term of that year was held by Justice Amasa J. Parker of Albany. The Talmadge murder trial next in the chronological order, demands our attention. John Talmadge in May, 1849, and for several years previously owned a farm in Malta ; the Round Lake Camp Ground Association now owning a portion of said farm. A highway from Maltaville to the East Line passed through his farm and by his residence, intersecting the Rensselaer & Saratoga railroad about twenty rods north of the house. The railroad ran

through the length of his farm, and a previous owner had agreed with the original directors to build the fences along the track, in perpetuity. This obligation Mr. Talmadge resisted, and the courts subsequently upheld the position taken by him. (The legislature passed an act March 27, 1848, directing that all railroad companies should fence their tracks and maintain cattle guards at the highway crossings. In the Saratoga county court in 1849, Judge Bockes held in the case of Waldron against the Rensselaer & Saratoga railroad, reported in 7 *Barbour* 390, that said act was not inconsistent with existing charters, and that railroad companies were liable for cattle killed by their locomotives where they had entered upon the track by reason of the failure of the company to comply with this law. This principle was confirmed in the Supreme Court in 1850.) His cattle wandered on the railroad, through the fences, which neither party would repair, and were killed by the locomotive. He brought suit and recovered judgments for their value. This naturally led to acrimonious disputes between him and Leonard R. Sargent, superintendent, and Asher Young, track master of the railroad. Such was the state of affairs, when on the morning of May 22, 1849, a locomotive attached to a northern bound train ran off the track at Talmadge's crossing. The engineer, William L. Dodge, of Green Island, sustained injuries to his head, which caused his death, at the residence of his uncle, David Cory in Ballston Spa, June 1.

The cause of the accident was at once attributed to the owner of the farm by one Joseph Phayre, a former laborer for Talmadge, but who had been discharged by him. He told Young that Talmadge had threatened to run the cars off the track. On his oath and other circumstances surrounding the case, Talmadge was indicted for the murder of Dodge at the August Oyer, 1849. He was brought to trial the following December before Hon. William B. Wright, justice of the Supreme Court of the third judicial district; Judge Bockes and justices Kellogg and Seymour. District Attorney Lawrence was assisted in the prosecution by Henry G. Wheaton and William A. Beach. George G. Scott prepared the defense, and was assisted at the trial by James B. McKean, William Hay, John K. Porter and Nicholas Hill, jr. So great an array of legal talent is seldom gathered in a court house to conduct a trial, even when the momentous issue of life and death is pending. After an exhausting search a jury was impaneled. The witnesses sworn for the people were L. R. Sargent, Thomas Collins, George Balfrey, William B. Harris, James Swartwout and Joseph Phayre. The important witness was Balfrey, who testified that he had landed in Quebec on a certain day and was on his way to Troy in search of work. On the twenty-second day of May, 1849, he was walking on the railroad near Talmadge's crossing, and feeling tired, had sat down in a clump of bushes to rest. While there he saw Talmadge drive a stone into the space allotted for

the flange of the wheel between the rail and the planks in the crossing. Before he could give the alarm the accident happened. This made a direct case for the plaintiff, it being supplemented by the testimony of Phayre that he saw Balfrey on the track near East Line on the day in question. But Judge Scott had been indefatigable in his efforts to save Talmadge from his perjured accusers. During the time that had elapsed after the sitting of the grand jury, he had been to Quebec, and ascertained at the quarantine that no such person as Balfrey had landed there at the time specified. He then went to New York and found that a man of his personal statistics had landed at Castle Garden *three days after* the accident. He traced him to Albany, and there found him in communication with Phayre. He had the evidence in court to establish that this was one of the most glaring attempts to secure a judicial murder by perjury that ever disgraced a calendar, not excepting the trials of the Irish rebellion cases of '98. To the credit of Messrs. Lawrence, Wheaton and Beach, it should be stated that as soon as they became convinced of this during the cross examination of Phayre by Mr. Porter, they refused to be parties to the infamous outrage on a citizen of hitherto unblemished reputation. The following is the entry on the minutes: "The counsel for the people having abandoned the prosecution, the jury under the charge of the court, without retiring, say that they find the prisoner not guilty." This was done

amid the plaudits of the large audience which was not restrained by the court for some minutes. Judge Scott, also, had evidence at hand to prove a complete *alibi*.

District Attorney Lawrence immediately ordered the arrest of the perjured Balfrey, *alias* Parker, and Phayre. They were indicted in February, and at the October Oyer, 1850, Parker plead guilty and acknowledged that he was suborned by Phayre and Asher Young. Phayre plead not guilty, but was convicted. They were each sentenced by Judge Paige to ten years at Dannemora. Young, fearing a trial and conviction for subornation of perjury on the confession of Balfrey, committed suicide by getting on a hand car at East Line, September 10, and running it toward Ballston Spa in front of an approaching train. He was struck and killed instantly. Dodge, the dying engineer, stated that the accident was owing to the speed at which he was running the engine at the time, causing it to bound on the track. The locomotive was afterwards named the "Wm. L. Dodge" and ran on the road for many years. Mr. Talmadge was nearly ruined, financially, by this dastardly attempt on his life, but is now a prosperous manufacturer of chemicals in the city of New York.

John S. Clarke, the counterfeiter, was again indicted in 1849, but as before escaped conviction, by some undefined process; but at the June Oyer, 1851, before Judge Hand, Luther Cole, one of his pupils, was convicted and sent to states prison for

a term of five years. Suffering, as did several other young men, for an alleged association with this slippery manufacture and wholesale dealer in the "queer."

At the June Oyer, 1850, an individual who had stolen a pony team, wagon and harness from William H. Wendell in Ballston Spa in the autumn of 1848, was brought to trial. He was arrested with the team near Kingston, N. Y. He gave only the name of "Unfortunate Johnny." So he was indicted and convicted, on a plea of guilty, under the *alias* of "John Misfortune." Judge Hand administered to him a five year's sentence to states prison, with the advice to never again disgrace the name he had so effectually endeavored to conceal. Other and unimportant trials occupied the attention of the criminal courts until in 1854, when District Attorney William T. Odell secured the indictment of Henry J. Chandler for the murder of John Hall at Saratoga Springs, January 31, by stabbing him with a knife. He plead guilty to manslaughter in the first degree at the June Oyer. The plea was accepted, and Judge Had sentenced him to a fifteen years term in states prison.

Nearly all of my readers will remember the case of Sol Northrup, a colored man, whose kidnapping from Saratoga Springs, March 10, 1840, his sale in the slave pen at Alexandria, Va., and his twelve weary years in bondage in Avoyelles parish, Louisiana, are graphically described in his book, "Twelve Years a Slave." In the summer of 1854,

Alexander Merrill and Joseph Russell were arrested at Gloversville and confronted with Northrup, who had recently been released through the efforts of Hon. Charles Hughes and Henry B. Northrup of Sandy Hill. They were indicted by our grand jury in October, 1854. Their counsel, Messrs. John S. Enos, William Wait, Clark B. Cochrane and William A. Beach, interposed a demurrer to those counts in the indictment which alleged the selling of Northrup as a slave, as having occurred at a place foreign to the jurisdiction of the state. The demurrer was sustained by the General Term, which held by Judge C. L. Allen, that to attempt to give the state jurisdiction on those counts was repugnant to the sixth amendment to the constitution of the United States. This decision is reported in *2 Parker's Criminal Reports*, 590. This narrowed the issue down to the kidnapping charge, but, before the indictment was brought to trial, Northrup again disappeared. What his fate was is unknown to the public, but the desperate kidnappers no doubt knew. A *nolle pros.* was entered in their case in May, 1857, by District Attorney John O. Mott.

The Court of Sessions had had plenty of business sent to it from the Oyer and Terminer for several years, about this time, by numerous indictments being found by the grand jury, through the efforts of the Carson League, to destroy the trade in ardent liquors. The so-called "Maine Law," which took effect July 4, 1855, led to an increased effort to

suppress the sale of intoxicating drinks. The constitutionality of this law was attacked by liquor dealers. It was sustained by the Supreme Court at several General Terms, noticeably at that held in our court house in December, 1855, by Justices Allen, James and Bockes. One Frank Quant came into court, on a writ of error from the Montgomery county Special Sessions, appealing from a conviction. The court affirmed the constitutionality of the law, and the opinion of Judge James is given in 2 *Parker*, 410. The principle was reversed and the law annulled by the decision of the Court of Appeals in the "People agst. Wynehamer," *ibid* 421, and "People agst. Toynbee," *ibid* 491.

Hon. Augustus Bockes having resigned the office of county judge, Gov. Seymour, February 6, 1854, appointed John A. Corey of Saratoga Springs to fill the unexpired term. In the November following, James B. McKean of the same town was elected to succeed him. At the first Oyer held in this county by Justice Bockes, in October, 1855, an indictment was found by the grand jury against Joseph Glasser, charging him with the wilful murder of Patrick H. Breen, at Galway, August 24, 1855. This homicide grew out of a *charavari* party. Several young men had *serenaded* a newly married couple and, at the instigation of one E. O. Smith, the bride's mother had caused their arrest. This angered them and they foolishly determined to burn Smith in effigy, on the public square, at midnight of August 24. They met on the night in question in the barn

of the elder Breen. While preparing the effigy a man was seen in the garden, as if watching them. Young Breen went out, *masked*, to see who it was, when the man presented a pistol and fired at him. Breen fell, mortally wounded (the ball entering his left breast and lodging in his spine), and cried out "Joe Glasser has shot me." The man fled through the darkness, but was recognized by several of the young men. He was arrested the same night at his residence. He was tried at a special term of the Oyer and Terminer, which commenced February 24, 1856, just six months after the tragedy. Justice C. L. Allen presided, with County Judge McKean and Justices of Sessions A. E. Brown and A. Hannay on the bench. District Attorney Odell and Hon. Lyman Tremain conducted the prosecution, it being the latter gentleman's first appearance in our courts. The prisoner was defended by Geo. G. Scott, E. F. Bullard, and Deodatus Wright. It was shown on the trial that Breen and Glasser had previously been friendly, that the latter had exhibited no malice toward him, and though it was urged that he had been hired to shoot another of the masqueraders, it was not susceptible of direct proof, so the trial resulted in a verdict of manslaughter in the second degree. He was sentenced to state's prison for a term of four years and six months. This result caused much excitement in Galway, and E. O. Smith was forced to yield to public sentiment and remove to the West.

Justice Enoch H. Rosekrans held his first court

in this county in September, 1856. At that Oyer, James M. Quillot of Mechanicville was indicted for uttering counterfeit meney. He was ostensibly a merchant tailor, but bore the reputation of being one of the most expert forgers of the signatures of bank officers in his day. He was too shrewd to expose himself to conviction, and escaped punishment for his alleged crimes through the technicalities of the law. Justice Platt Potter held his first term in this county in January, 1859. At the May Oyer, 1859, the grand jury presented the dogs of the county as a public nuisance. Their action was, however, ineffectual, for the nuisance remains unabated.

At the February Sessions, 1857, before Judge McKean, Patrick McKinney was convicted of perjury in a suit tried before Justice John Cramer, 2d, in Waterford, August 26, 1856, in which Patrick Larkin was plaintiff and Platt R. Doughty was defendant. The alleged perjury was his testimony that he was present when Larkin bought twenty lambs of Doughty, for which he was to pay \$44, that four of them were then delivered to Larkin, and the balance were to be taken when he (Larkin) called for them. Although it was otherwise sufficiently proved that the price and terms were as he testified, it appeared that he was not present when the bargain was made. Upon this proof Judge McKean charged the jury that if the prisoner did not know the truth of his evidence of his own knowledge, although it might be true, if it was

wilfully and corruptly given to affect the result of the action pending, it was perjury. He was convicted, and a writ of error was taken to the Supreme court, where it was argued for the prisoner by William A. Beach, and for the people by District Attorney Mott. The conviction was affirmed, and Mc Kinney was sentenced to states prison for two years. The case is reported in 3 *Parker* 510.

In the June Sessions, 1858, Daniel O'Leary was tried and convicted on an indictment charging him with an assault with intent to kill with a deadly weapon Margaret Collins, at Waterford, September 22, 1857. Isaac C. Ormsby, his attorney, removed the case to the Supreme Court on a writ of error in which he insisted that it was necessary to prove an assault and battery and an intent to kill with a deadly weapon; that the verdict of the jury, as rendered, to wit: "The jury find the prisoner guilty of an assault and battery with intent to kill," was a special one, and not in accordance with the indictment; nor was it a conviction of a crime either against the statute or the common law. He also insisted that the prisoner was entitled to a discharge, having once been legally tried for his offense. The district attorney resisted, but the court held that it was a special verdict. A general verdict of "guilty" would have been sufficient, but when the jury went further and sought to convict him of an offence not laid down in the statute, nor held at common law, the prisoner was in effect acquitted; and it directed his discharge." This case,

reported in 4 *Parker* 155, should teach jurymen to be cautious in attempting to word their verdicts specially, when they intend to convict on the direct offense charged in the indictment.

At the September Oyer, 1859, before justice Henry E. Davies, of the first district, a New York pickpocket who gave the name of John Thomas, was tried and convicted of having robbed the person of Mrs. Margaret P. Millard at Saratoga Springs, July 22, 1858, of property valued at \$1,935. He was sent to Dannemora for five years. After he had served his time he again returned to his old field of "striking," and was detected on the train near Saratoga changing a check from his valise to a lady's trunk. While in jail on this charge he and Corydon Rose, another prisoner, sought to burn a hole through the floor of their cell and thus effect their escape. They were discovered by jailor Fred. T. Powell, who, smelling the smoke, went to the corridor and asked Thomas if he had a fire in his cell. He answered: "Yes, but it has got the best of me." On their trial for arson in the January Oyer, 1867, Mr. Powell's evidence to that effect was contended by the prisoners' counsel to show that they had not intended to burn the jail, and they were acquitted. He also escaped conviction on the other charge by the absence from the state at the time of the trial of a material witness for the people. Since then he has absented himself from this vicinity.

At the September Oyer, 1860, two indictments for

murder were found : viz. one against John H. Price for the shooting of James Cox, in Wilton, and the other against William Vanderwerker for the shooting of Harrison Sherman. The first indictment was tried at the term it was framed. District Attorney Charles S. Lester appeared for the people, and the defense of the prisoner was conducted by Clement C. Hill. It was shown on the trial that Price, then a boy of eleven years, had gone into the residence of Mr. Cox, in Wilton, took up his gun, pointed it at the head of little Jimmy Cox, a boy of four years, and in the presence of the mother, deliberately shot and killed him. He was convicted of manslaughter and sent to the Western House of Refuge. Subsequent developments prove him to be a sort of compound of Jesse Pomeroy and Piper, the "belfry murderer," for since his release from the house of refuge, at the October Sessions, 1868, he was convicted of a deadly assault on George W. Harder, at Wilton, July 1 of that year, and sentenced to the county jail for three months. At that trial he was defended by Lewis Varney. He is now serving a term of one year in the Albany penitentiary for an assault with attempt to kill with a deadly weapon (a pitchfork) James S. Taylor, at Wilton. July 23, 1875. He was defended on this trial at the November Sessions by Jesse S. L'Amoreaux and Jesse Stiles. The shooting of Sherman by Vanderwerken was an act of drunken frenzy. Sherman was track-master of the Rensselaer and Saratoga railroad, and on the morning of July 27, 1860, as he left his

house to go to his work, the drunken Vanderwerker emerged from his house, on the opposite side of the street in Waterford, with a shot gun, which he raised to his shoulder and shot his victim through the heart, killing him instantly. Sherman was much beloved by the railroad men, and Vanderwerker twice escaped lynching at their hands only by the vigilance of sheriff George B. Powell. At the January Oyer, 1861, he plead guilty to the crime of murder in the second degree and Judge Platt Potter sentenced him to imprisonment for life. At the time of his incarceration he was fifty-seven years of age.

December 23, 1860, one Charles Harvey, formerly a "gift book" dealer, made his advent in Ballston Spa. He went into the Railroad hotel, kept by Lewis Sickler, where he met the author of this book, who had previously known him in Mechanicville. While in conversation he spoke of an encounter he had had with the Albany police the night before, and exhibited a bullet hole in the skirts of his coat. He hired, the same day, a horse and cutter of Stephen B. Medbery to go to Saratoga lake, but drove to Castleton, below Albany, where he disposed of the rig. Mr. Medbery recovered his property after a few months, but nothing more was seen of Harvey until a few days after the battle of Bull Run, in July, 1861, when he was discovered by officer Mitchell at Congress Hall, Saratoga Springs, in the full uniform of a major of Pennsylvania volunteers. He was arrested, plead guilty

at the December Oyer following, and was sent to states prison for two years. He is now serving a five years' sentence in the Albany penitentiary for a "confidence operation" on a Nova Scotian in the Albany depot, a year or so ago.

At the September Oyer, 1862, John R. Packard and Mary A. Packard, his daughter, were convicted of manslaughter in the second degree for causing the death of officer William W. Mitchell, and sentenced to four years imprisonment in states prison. The facts were in substance as follows: Packard was a physician in very reduced circumstances, and he and his two daughters lived very secludedly in Saratoga Springs. They had been subjected to annoyance by evil-minded persons, and when, on May 22, 1862, officers Vibbard and Mitchell went to the house to serve legal process they were refused entrance. They burst open the door, when a pole with a knife attached was thrust out inflicting a mortal wound on the person of Mitchell. They were defended by James P. Butler and Joseph A. Shoudy, while District Attorney Lester maintained the interests of the people. Mary was accordingly taken to Sing Sing and her father to Dannemora. Mr. Butler, their counsel, believing them unjustly convicted, continued his gratuitous labors in their behalf and a year later secured their pardon from Governor Fenton. They then went to the far West.

At the May Oyer, 1863, William Dougherty was tried for the murder of Thomas Martin at Schuylerville, October 31, 1862. District Attorney Isaac C.

Ormsby and Edward F. Bullard appeared in behalf of the people, and John Lewis and Edgar L. Fursman for the prisoner, who was convicted of manslaughter in the second degree and sentenced to seven years in states prison. At the January Oyer, 1866, Cornelius S. Huyck was convicted of manslaughter in the fourth degree for causing the death of Susan H. Rogers, a little girl, at Mechanicville, by an act of culpable negligence, being the careless use of fire-arms, and he was sentenced to the county jail for six months. This was followed by the trial in the November Sessions, 1864, of Abraham C. Bentley, indicted for an assault and battery with a deadly weapon upon Henry Evans. District Attorney Ormsby and J. S. L'Amoreaux appeared in behalf of the people and the prisoner was defended by D. B. Carver and W. B. Litch. Bentley and Evans were at work in the woods, in the town of Providence, June 20, 1864, when an altercation arose and Bentley stabbed Evans with a knife, in the abdomen. Although nearly disemboweled, he walked about two miles before he could get aid. He subsequently recovered. Bentley was convicted and sentenced to states prison by Judge Hulbert for four years and six months.

Julia A. Nash, a notorious character who had given much trouble to the courts for several years, was on the third day of July, 1866, serving a sentence for petit larceny in the county jail. Wishing to enjoy her liberty the next day, on the night of the third she effected her escape by removing four

bricks from under the window and escaped by squeezing her body through that orifice. She was re-arrested the next day by officer Henry Harrison and returned to her old quarters. At the following September Oyer she was tried and convicted of jail breaking and sent to Sing Sing for one year. At the same term Charles Johnson, by the advice of counsel, plead guilty of the disgusting crime of rape. He was a negro, and the victim was a small white girl whom he assaulted and ravished while gathering berries. It was his second crime of the kind, and, although he asked the mercy of the court, Judge Bockes sentenced him to a quarter of a century's imprisonment at hard labor. It was soon discovered that a recent legislative enactment had limited the punishment for this crime to twenty years, and Johnson was again brought into the court room and sentenced to the full extent of the law.

A defense of insanity having been successfully interposed by J. P. Butler in the case of John Morgan, indicted for firing a pistol at Michael O'Neil, at Saratoga Springs, June 21, 1867, at the December term of that year he was, on motion of District Attorney Ormsby, ordered by Judge Hulbert to be confined in the state lunatic asylum at Auburn. That defense has never been a popular one in this county.

Again the records are stained with blood. William J. Kirtly was brought to trial for the murder of John T. Jones of Saratoga Springs, August 25,

1867. This case illustrates the dangers arising from the carrying of fire arms by persons of an easily irritable nature. A dispute arose on the piazza of one of the hotels. Jones unguardedly struck Kirtly a blow, and the latter at once drew a pistol and shot him. The situation of the parties and the motives that led to the blow were such as to easily show that it was a homicide of the lower grade of crime; one that would not have occurred had Kirtly been unarmed. He was, too, a partial cripple and his irritable nature was induced by that misfortune. At the trial in the September Oyer, 1867, before Judge Potter, he was prosecuted on behalf of the people by District Attorney Ormsby and L. B. Pike. He had the assistance in his defense of James P. Butler and William A. Beach, and was convicted of manslaughter in the second degree. He was a native of Marietta, Ga., twenty eight years of age, and was sentenced to serve a of five years at hard labor in Dannemora. This was followed by the indictment of a negro named James Robinson for shooting and killing his white mistress, Sarah C. Crabb, *alias* Mabee, in the town of Day, March 20, 1869. When arraigned he plead not guilty, but finding that Gen. Winsor B. French, then district attorney, was making a strong case with a tendency to a hempen terminus, he plead guilty to murder in the second degree, and was sentenced to states prison for life by Judge Bockes. The desperado has since escaped from Dannemora, and is yet at large.

For several years prior to 1870, the notorious Michael H. Hickey, the "wickedest man in Saratoga," had defied law and justice at his Lake avenue den in that village. Finally, in one of his drunken orgies, he took a pistol and fired at random on the street. District Attorney French then determined to rid the county of the monster. At the January Oyer he procured indictments against Hickey for an assault with intent to do bodily harm, keeping a disorderly house, receiving stolen property, grand larceny, and for an assault with intent to kill with a deadly weapon one James Murphy. He was tried at the June Sessions for keeping a disorderly house, convicted and sentenced to one year in the Albany penitentiary and to pay a fine of \$250. At the December Sessions in the same year, he was convicted of the assault on Murphy, and for the shooting the pistol in the street and sentenced to six months in the penitentiary on each charge, each sentence to follow the former successively, making his imprisonment two years in all. It was effectual, and Judge Hulbert and Gen. French were congratulated on their success in removing him from the county. Previous to his first trial he forfeited his bail, and was recaptured by detective James N. Case as he was about to embark for Ireland at Boston, for he knew that the authorities meant business while he was on American soil.

The Van Rensselaer "anti-rent" cases have in several instances led to the loss of life in the coun-

ties of Rensselaer, Albany and Columbia. In 1869, Col. Walter S. Church, representing the Van Rensselaer estate, obtained a writ of ejectment from the Supreme Court to dispossess one William Witbeck from the farm he occupied under a manorial lease in East Greenbush, Rensselaer county. Deputy Sheriff Willard Griggs went with a *posse* to serve the writ July 26, 1869. It was resisted and a combat took place in which several firearms were discharged by both parties. Several wounds were received, and that upon the person of Sheriff Griggs was mortal, and from which he soon afterwards died. District Attorney Timothy S. Banker, after several fruitless endeavors, procured an indictment in the Rensselaer Session in February, 1870, against William Witbeck his sons Benjamin and John P., his son-in-law Zebulon Bass, and hired man William Wood, charging them with the wilful murder of Willard Griggs. Subsequently, on motion in the Supreme Court, he procured a change of *venue* to the Saratoga Oyer and Terminer. It was brought to trial at a special term of the court held by Judge James, July 25 of the same year. The people were represented by Timothy S. Banker, William T. Odell, Matthew Hale and William A. Beach. The prisoners had the aid of Edgar L. Fursman, Lemuel B. Pike, Henry Smith and Martin I. Townsend. Outside of this array were Col. Church, assisting the prosecution and Anson Bingham, of the noted firm of lawyers in Albany who have managed the anti rent civil suits, aiding the

defense. The evidence, arguement of counsel and rulings of the court were phonographed by Spencer C. Rodgers of Troy, and his assistant, — Tinsley, who alternately relieved each other during the five days of the trial and made two copies of their day's work each night. There was a great anxiety on the part of jurors to escape sitting on the trial and one of the panel, who could not learn enough of the case to form an opinion, secured a rejection by telling Mr. Townsend that his "mind was so constituted that he always agreed with the man who spoke last." The evidence was thoroughly and exhaustively presented to the jury on the part of the prisoner by Messrs. Smith and Townsend, and on behalf of the people by Messrs. Hale and Beach. Judge James charged the jury fully on the law and committed the case to them. After an absence of about an hour they returned with a verdict of "not guilty."

In the spring of 1870, the people of this section were astonished to hear that in the person of Charles H. Stevens who had been arrested on the charge of stealing a horse from Hiram Parker of Clifton Park, the authorities had secured no less a personage than the notorious Barney Francisco, the most expert horse thief and land pirate since the days of John A. Murrell. As soon as he was jailed, he began to feign penitence for his crimes and divulged where several other horses taken from all parts of the state were. Some of them were recovered, and it was noticed that all of them were in the hands of

innocent purchasers at the time. He wanted to be taken to Pittsfield, Mass., and give evidence against some of his gang there. He also pretended to tell where he had seen the team of James E. Davis of South Ballston, which had been stolen in the previous February, and indicated two fishermen named James and Benjamin Eldred, of Greene county, as the thieves who had taken the horses. The Eldreds were arrested, indicted for this alleged crime, and brought to trial at the June Sessions, 1870. District Attorney Ormsby was the public prosecutor and the prisoners were defended by James P. Butler. Francisco was the chief witness to establish the crime, but he broke down under the fiery cross examination of Mr. Butler, and, forgetting the part he was assuming, he sat erect in his chair throwing aside the drooping shoulder he had worn as a disguise ever since his incarceration here. The prisoners proved an *alibi*, and the jury acquitted them. The team were afterwards found near Hudson, where a man with the familiar name of John Smith had sold them shortly after the theft. Francisco, soon after, induced constable Samuel C. Beeman of Ballston to bail him and go with him to Pittsfield. They went there in company with Deputy Sheriff Chapman of Berkshire county, and the wily horse thief slipped from their custody and escaped. He was thought by some to have been the same person as the notorious E. H. Ruloff, hung at Binghamton in 1872.

The evil practice of corrupting the elective fran-

chise having been introduced into this county such an extent that at the polls in certain towns at nearly every election a class of men, unworthy of the liberty they enjoy, were purchased to the great scandal of our county and the lowering of the standard of political morality, the grand jury impaneled at September term 1870, consisting of men of both political parties headed by James L. Cramer of Saratoga Springs, foreman, made a formal presentment condemning the practice of buying votes at elections as subversive of our political and national liberties. Judge Bockes thanked them in behalf of the court and directed that the presentment be entered upon the minutes by the clerk.

Two offenses against human life were brought to the attention of the court at the May Oyer, 1871. One was the indictment of Henry Husher of Saratoga Springs for the murder of Samuel Young, March 7, previous, in an affray ; and the other that of Wallace Vandercook for shooting Andrew Fellows of Clifton Park, February 7. He was also indicted for robbery of the person of Fellows. Husher was allowed to plead guilty of manslaughter in the first degree and was sentenced to states prison for ten years. Vandercook's crime was a most dastardly one, and in some respects rivaled the shooting of Halpine by John I. Filkins, the express robber. Both shot their intended victim through the head making similar wounds, and in each case there was a recovery from the nearly fatal shots. The object of each was to obtain money ;

Vandercook having decoyed Fellows, a farmer, into his barn yard and there shot and robbed him and then fled. Both were convicted on the robbery charge, as being the most serious count under the statute. Vandercook was sentenced to state's prison for a term of fifteen years. At the January Oyer, 1872, William Cherry of Saratog Springs was tried before Judge James on the charge of murdering his wife. He was ably and successfully defended by L. B. Pike, P. H. Cowen and John Foley, and after hearing the evidence the jury acquitted the prisoner. The woman fell, while both were intoxicated, and received fatal injuries.

Next in order comes the trial, the result of which has done much to lower the standard of the Saratoga county juries. That was the acquittal of the notorious Peter Curley. The state at large as well as our county were astounded in October, 1872, to hear of the robbery of the Saratoga County Bank at Waterford, by an organized gang of thieves, and of the cruelties and indignities practiced by them upon D. M. Van Hovenburgh, the cashier, and his family at the dead of the night. Suspicion soon fell on Peter Curley, a well known professional burglar, formerly of Troy, who had hitherto escaped conviction. Pending a watch of his motions by the New York detectives, one William C. Brandon was discovered selling some of the stolen bonds in the city of New York. He was arrested by detective Edward Radford who recognized him as a well known "fence," or concealer of stolen goods. Cur-

ley was arrested about the same time, and in default of \$500,000 bail they were committed by Justice William Shepherd to the Ballston jail to await indictment. They were duly indicted at the January Oyer, and a special term of the court was set down for their trial March 6. The court duly convened with Justice Bockes presiding. The people were represented by District Attorney Ormsby and Edward F. Bullard. Curley, who was brought to trial, was defended by Messrs. Fursman, Pike, Odell, Miles Beach, P. H. Cowen and Henry Smith. The evidence showed Curley at Hudson, the next day after the robbery, tampering with officers to be released from arrest, and was quite direct in following him from the bank to Albany and thence to Hudson. The case was summed up by Mr. Smith for the prisoner, and Mr. Bullard for the prosecution. Judge Bockes' charge was pointed and was one of the ablest ever given from the bench in this county. The jury disagreed, ten standing for conviction and two for acquittal. He was re-tried at the May Oyer, again before Justice Bockes. The same evidence was given, it was explained to the jury by the district attorney and Mr. Fursman, and the court substantially reiterated its former charge. To the astonishment of all, themselves and some of Curley's friends alone excepted, the jury rendered a verdict of acquittal, and followed it up by going to a hotel and partaking of a banquet provided by the funds stolen from widows and orphans on deposit in the bank. Curley was thus turned loose,

and the legitimate fruit of this dereliction of duty by two Saratoga county juries was the Barre, Vt., bank robbery by Curley, who to escape conviction a few months since turned state's evidence and convicted George E. Miles, another of the gang. Brandon gave bail to the next term, and finally a *nolle pros.* was entered. Rumors that the felony was compromised by a committee of the losers were generally believed.

The difference between New York and Vermont justice was again illustrated at the January Oyer, 1874. One Daniel J. Shaw was indicted for committing bigamy in this county. He claimed that he thought that an agreement signed by himself and wife to live apart was a valid divorce. He was bailed on his own recognizance to appear at the next Sessions. He then went with his new wife to Rutland, where the old spouse followed him, had arrested for adultery, (a crime in Vermont) and he was consigned to Windsor prison for two years before the time arrived for him to appear for trial here.

The Board of Supervisors of 1873, having discovered gross irregularities in certain constables' bills, caused the indictment of Samuel C. Beeman, Erastus R. Fort and Jacob Devoe for perjury in swearing to false items in their bills. Also, against Charles Rosekrans and Jacob Devoe for forgery in the third degree, in presenting for audit a forged constables' bill in the name of Samuel Johnson. The indictments were found at the January term,

1874. After various dilatory measures had been taken, they plead guilty at the April Sessions, 1875, and thereupon Charles S. Lester, county judge, sentenced them each to pay a fine of \$250. Michael Rattigan and William W. Garrett, excise commissioners of the village of Ballston Spa, were at the same term each fined \$25 for violation of the excise law, in refusing to revoke a license on due proof of its terms having been broken. James Mullen was tried and convicted at the February Sessions, 1875, for having made an assault with an intent to kill James Norris at the latter's residence in the town of Providence, in the previous summer. Mullen, who was a tanner working at Barkerville, was an alleged paramour of Norris' wife, who was much the junior of her husband. A plot was arranged to shoot Norris, and he was severely wounded by a pistol shot in his head while drawing some cider to treat his would-be murderer. It proved to be one of those instances where the thread of life is not snapped under the strongest tension, and the hardy Celt, with the ball in his brain, fully identified his assailant on the witness stand. Mullen was defended on his trial by George W. Hall. He was sentenced to state's prison for nine years and six months. James H. Standish was tried at an adjourned Oyer and Terminer, August 25, 1874, for the murder of George W. See in Wilton, February 28, previous. The deed was done in an affray. See lived in Standish's house, and the latter assaulted the former's wife in his absence. On the

husband's return, he called Standish to account, when the latter seized a flat iron and crushed poor See's skull. He was prosecuted on his trial by District Attorney Ormsby and Hon. Lyman Tremain, and defended by Gen. French and Hon. Henry Smith. He was convicted of murder in the second degree, and Judge Judson S. Landon passed on him the life sentence.

At the September Oyer, Charles F. Betts plead guilty to the charge of an assault with intent to kill with a deadly weapon, one Josiah Stratton in Galway, at the "reservoir, and was sent to states prison for five years. James McEnery and Michael Dwyer, the Waterford cemetery ghouls, were also convicted, notwithstanding the ingenious defense put in by their assigned counsel, Theodore F. Hamilton, and sent to the penitentiary for six months.

An unfortunate affair occurred at Saratoga Springs on the night of April 22, 1875. John F. Dennin, a constable, while intoxicated attempted to arrest George W. Rogers for intoxication. During the *melee* which ensued, Rogers' skull was crushed by a blow from a blunt instrument, from the effects of which he died. Dennin was indicted in May for manslaughter, and tried in the February Oyer, 1876, before Justice Joseph Potter. The people were represented by District Attorney Ormsby and N. C. Moak of Albany. Notwithstanding the efforts of his counsel, L. B. Pike, J. Van Rensselaer, C. H. Tefft, Jr., and E. L. Furs-

man, Dennin was convicted of manslaughter in the third degree, and sentenced to Dannemora for two years.

The year 1875 was an "off year" for pickpockets in Saratoga Springs, by reason of the efforts of an able corps of detectives from New York being employed at the hotels. John D. Sanburn, a sneak thief, was caught at the Grand Union by detectives Joel Pike and Edward Radford. He was identified by John T. Saxe of West Troy, as the man whom he saw stealing his diamond studs in his room in Congress Hall, and to Mr. Saxe's credit be it stated he refused to "compromise," and prosecuted him to a conviction in the September Oyer. He was sent to states prison for two years. James Anderson, a sneak thief, caught by detective Thomas Dusenbury in Congress Hall, plead guilty to an attempted burglary, and was sent to the penitentiary for three months. W. H. Stanley, *alias* Jackson, was shadowed by detective James M. Tilley from the United States Hotel to the Wilbur House, where he took rooms and was caught at midnight by Deputy Sheriff Brown in the act of trying to open the doors of guest's rooms. He plead guilty at the November Sessions. Being sentenced to two years and a half in Clinton prison, he was the first prisoner from this county sent up over the New York and Canada railroad.

Among the characters imprisoned in the jail in recent years was an Englishman who gave the name of Charler H. Baker. He was arrested in the sum-

mer of 1874 for attempting to purchase machinery of Barber & Baker of Ballston Spa, under the false pretense that he was the agent of a mining firm in Montana territory, to which section the machinery ordered was to be sent by his directions. His true character having been divulged, the firm did not fill his order ; but instead, procured one for his arrest, which was effected at Fort Edward, whither he had gone, by deputy sheriff D. S. Gilbert. He was committed to the county jail to wait the action of the approaching grand jury. This was a turn of affairs not laid down in the programme of his summer's tour, and he soon tired of the monotony of prison life. He first sought to alarm Jailor Jeffers by informing him that he had developed a case of small pox, having been exposed to that disease shortly before his incarceration. Another prisoner weakened the dubious faith of the jailor in that story, by informing him that Baker had been putting croton oil on his face and arms to cause the eruptive blotches which were apparent. Dr. Noxon, the jail physician, on examining the prisoner exposed the fraud. This attempt to "break out" having failed, he next confessed to a pretended murder in Paris during the Commune siege, saying that he was a member of the "Foreign Legion" and had murdered a comrade by throwing him over the parapet of a bridge across the Seine. His object was to have the story reach the ears of the French minister at Washington, and thus cause his extradition for a crime against the French republic. He

knew that a conviction could not be had for a capital offense on his unsupported confession, and he would thus be set at liberty. A few days subsequent to the publication of his so-called confession in one of the city papers, Mr. Thompson, of the *Troy Daily Press*, and the author interviewed him in the jail. Mr. Thompson was in Paris in the days of the commune and readily detected the falsity of the fellow's statements from his own knowledge of the city. The French authorities refusing to notice him, he plead guilty to the indictment found against him. His offense not having fully perpetrated, and in consideration of the time he had been in prison, he was sentenced to be confined in the county jail for the term of five days. At the expiration of that time he departed, and soon wended his way to New Hampshire, where he began his old tricks and before the end of the year had secured a situation for five years.

"Self-preservation is the first law of nature." Next to that, in all civilized nations, is the preservation of the public health. For that purpose our legislature has wisely directed that "Boards of Health" may be established in all the cities, villages and towns of the state, and has conferred upon them seemingly arbitrary and summary powers. It has been the practice for years for the several village boards, as soon as possible after they have been constituted, to meet and adopt sundry "rules and regulations" for the ensuing year. Usually they adopt those of the preceding year, with any

amendments that may be necessary. In the spring of 1875, the Board of Health of Saratoga Springs, composed of Dr. Frank M. Boyce, Justice Phineas F. Allen and Trustee George Hinkley, by due appointment under the laws, met and adopted the by-laws of the previous year and caused them to be published. The fifteenth by-law read as follows :

“All physicians having any case or cases of small pox, or cholera, shall immediately report such case or cases to the board of health ; also, all persons having on their premises any case or cases of small pox, or persons known to have been exposed to the same, or of cholera, shall immediately report the same to the board of health, or any member of the same.

In the latter part of the month of November, 1875, the child of Mrs. Carrie Chase, residing on Washington street in a thickly settled part of the village, became sick with an eruptive disease. Dr. Thomas E. Allen, a physician practicing in the village, was called. The child died and several matrons in the vicinity went in to perform the last offices. About a fortnight later they were taken with a similar disease. Other physicians were called and it was pronounced the small pox, or in some instances, the varioloid. A strict quarantine was at once established and Dr. Allen was severely censured by the public for not reporting the case of the Chase child. He replied that it did not have the small pox, but *variocella*, or chicken pox. Several deaths followed from the foul disease, but the excitement had about died away when on the third day of January, 1876, it became known that

Allen had privately buried his cook, a colored woman named Ella Lewis, in Green Ridge cemetery, the night before. He was at once arrested and held to bail for violating the by-law before quoted. His boarding house was put in quarantine with its inmates, including Rev. Mr. Woods, pastor of the First Baptist church, and family and Miss Alice H. Burt, a teacher in one of the public schools. Other fatal cases followed which were indirectly traceable to his negligence besides some not fatal in his house, which resulted from this exposure. He was indicted on three several charges at the February Oyer, and brought to trial at the March Sessions on the indictment alleging criminal negligence in the Lewis case. County Judge Lester presided with Justices of the Sessions John Brown and John Peck. District Attorney Ormsby had the assistance of John Van Rensselaer of Saratoga Springs ; and Dr. Allen in his defense had secured the legal services of Lewis Varney, James M. Andrews, Jr., and James P. Butler. Their first endeavor on the moving of the indictment, for trial was a motion to quash the indictment on the ground of the unconstitutionality of the law under which the by-laws were drawn. It was at once denied by Judge Lester. They then endeavored to put the case over the term on affidavits. It was met with a counter affidavit by the district attorney. Judge Lester left the question of the sufficiency of the affidavits to his associates on the bench, and they decided that the case must

be tried at that term. This is said to be the only instance in this county where a question has been decided solely by the Justices of Sessions.

A day having been set for the trial, at the appointed hour the Doctor appeared with his array of counsel strengthened by the addition of Rufus W. Peckham of Albany, a son of the well known judge of that name who was lost on the *Ville du Havre*. After a close search, twelve jurors were found acceptable to both the people and the prisoner. The evidence of the people showed by Job Lewis, husband of the deceased cook, that Allen told him to allow no one to enter her room, as early as Wednesday previous to her death on Sunday, and that on Thursday he told him she had the small pox. He detailed the manner of her decease and midnight burial by him and the doctor under the latter's directions. Evidence of the undertaker of whom the box in which she was buried and of the sexton of the cemetery was taken to show the declarations of Allen confirmatory of the theory that he knew she had small pox. He relied on the evidence of his brother, Dr. Asa Allen, to prove that Mrs. Lewis did not, in his opinion, have small pox, and his own testimony to the same effect, and that he went to Dr. Boyce's office on Sunday and Monday to notify him and did not find him at home. He fortified the latter with the testimony of Miss Burt, that she was with him on the latter occasion. It was proved on the part of the people by the physicians who exhumed and examined the remains

that Mrs. Lewis died of confluent small pox, and all three of the members of the board of health testified that Dr. Allen never notified them of any case of the disease. He admitted in his evidence that at the time Ella Lewis died, his housekeeper, Eliza Gunn, was sick under his roof with small pox. Judge Lester charged the jury in substance that the fact that he did not notify either member of the board of health of this case was *prima facie* evidence of wilful negligence on the part of Dr. Allen, and that it was their duty to judge if he did so wilfully violate the said by-law. The jury retired at 2 P. M. and returned into court at noon the next day unable to agree and were discharged. They stood eleven for conviction and one for acquittal. Whatever may have caused his firmness in not yielding to the convictions of his fellow jurors, this case has excited the question whether a unanimity of jurors should be asked. And whether an amendment to the constitution, which will allow a two-third vote to determine a verdict, should not be adopted to prevent the thwarting of justice by the obstinacy of one man's will opposed to the judgment of eleven of his peers. Allen's indictments were then sent to the next Sessions for trial, but previous to that he had sought safety in a permanent journey to some *terra incognita*; having probably gone to be a companion to the forger Winslow under the protecting ægis of the British flag.

The history of our criminal courts would not be

complete without giving the details of an indictment for an infraction of the excise laws, as they at present exist. Such an one was the People against Michael O'Rourke, a saloon keeper, in Saratoga Springs, who was indicted for selling strong and spirituous liquors at retail in quantities less than five gallons, to be drank on his premises, on the first day of February, 1874. The indictment charged the selling of "one pint of brandy, one pint of beer," etc. The defendant plead not guilty. He was tried at the June Sessions, 1874, before Judge Lester. The court directed that the district attorney should confine the evidence to the selling of beer. The defendant, by Messrs. P. H. Cowen* and John Foley, his attorneys, offered a hotel license in evidence but the court refused to receive it on the ground that the defendant's place was a *saloon*, not a hotel in the purview of the law; and held with Judge Mason, that such a license to a saloon keeper was in violation of the sixth section of the excise law of 1857. Upon proof of sale of beer, as alleged in the indictment, the jury convicted O'Rourke and he was fined fifty dollars. He took a writ of error to the General Term, where the conviction was reversed, and until a decision is had in the Court of Appeals this case stands as a

*Mr. Cowen has inherited his father's talent for legal authorship, and has compiled a "Digest of Criminal Decisions" in our state courts from 1777 to 1870. It was published by W. C. Little of Albany. It was received by the bar with great favor as a work of exceedingly high merit and worth.

ruling precedent to guide the action of the courts in the third department.

During the period embraced in this chapter, Sheriff Thomas Low had been succeeded by Theodore W. Sanders, William T. Seymour, Henry H. Hathorn, Philip H. McOmber, George B. Powell, Henry H. Hathorn, Joseph Bancus, Tabor B. Reynolds, Thomas Noxon and Franklin Carpenter. Philip H. McOmber, had been succeeded in the care of the jail by Frederick T. Powell, and he successively by Manlius Jeffers and Brill Larmon. Jailor Powell was in charge of the court house and jail for fifteen years, a longer period than any other person excepting Gen. Dunning. During all this long interval James W. Horton sat at the clerk's desk, while crier Boss was successively followed by Nathaniel J. Seeley, Freeman Thomas, David F. White and Norman S. May. Unlike his predecessors, Mr. May is in the prime of life and is a very useful adjunct to the courts, serving somewhat in the capacity of marshal, which position he holds as a deputy in the United States courts for the northern district of New York.

CHAPTER XIV.

IMPORTANT CIVIL ACTIONS TRIED UNDER THE CODE.

The constitution of 1846, as has been heretofore stated, abolished the old courts of the state and substituted new ones in their stead. It provided for the adoption of civil and criminal codes which should take the place of the old time honored common law. A civil code was formed by the commission appointed for that purpose and was adopted by the legislature and went into effect July 1, 1848. The commission framed a criminal code, but it has never been adopted, and the common law yet prevails in the criminal courts, except when it contravenes the term of any statute. The Court of Appeals under the constitution, as constituted by the act of May 12, 1847, was to consist of four judges elected for that purpose to serve eight years, the terms to be decided by lot, and four justices of the Supreme Court having the shortest time to serve. By the amendment of the constitution adopted in 1869, it now consists of a Chief Judge and four judges elected for a term of fourteen years. Any judge who arrives at the age of seventy years shall vacate the office on the thirty-first of the ensuing December, and any vacancy shall be filled by an election for a full term. Under the

code the Court of Appeals has the same jurisdiction that was possessed by the old Court of Errors. The judicial act provided that four justices of the Supreme Court should be elected in each of the eight districts of the state, with an additional justice in the first district. They should hold office for eight years and possess all the powers of the former Court of Chancery and judges of the Supreme and Circuit Courts. Special Terms for hearing non-enumerated motions were to be held at stated times, and a General Term was to be held in each county, at least once in each year, by the four justices of each district. As Circuit judges they were to hold the Circuit Courts and Oyer and Terminers. By the statute passed in pursuance of the amendment of 1869, the former General Term was superseded and the state was divided into departments, and the governor was authorized to select three of the justices of the Supreme Court in each department to sit at General Term and determine the cases brought before them on appeals from the courts below. They were to be elected for terms of fourteen years with the same constitutional provision as to age and the filling of vacancies as that of the Court of Appeals. They are prohibited from practicing as attorneys, or sitting as referees.

The new County Court was to have jurisdiction of all appeal cases pending in Common Pleas; actions involving dower; partitions, when the land lies in the county; actions for debt, when defend-

ant lives in the county, and the amount claimed does not exceed \$200 ; actions for assault and battery and false imprisonment, when the sum of damages claimed is under \$500 ; trespass to real or personal property, when damages claimed is under \$500 ; actions in replevin, when the value of the property does not exceed \$1,000. It can hear appeals from justices courts and grant new trials, but has no jurisdiction at Common Law. It has had equity powers conferred in it to direct foreclosures of mortgages, the sale of infant's estates and real estate of religious corporations in the county. The county judge may perform all the duties that might have been performed by judges of Common Pleas prior to May 12, 1847, and, if of the degree of counselor at law, act as a commissioner of the Supreme Court.* The County Court is always open for the transaction of business, and the judge shall perform the duties of surrogate in all counties having less than 40,000 inhabitants, and in those counties when the surrogate is in any manner incapacitated from serving. The jurisdiction of the court has been enlarged by several amendments of the code of procedure. Under the rules adopted by the Supreme Court, in pursuance of the constitution of 1846, all attorneys of the Chancery, Supreme and Common Pleas courts were continued as attorneys and counselors of the several courts of the state, and the modes of admission for applicants have from time to time been adopted and modified by the General Terms. From that time, then, the

roll of attorneys of a particular county became merged in the bar of the state.

The first civil action of importance tried in the new Circuit Court at a term held in this county was in June, 1848, before Justice Augustus C. Hand, being that brought by William B. Harris and John Harris against Thomas B. Thompson and eighteen others. Isaac W. Thompson and Samuel Stevens were counsel for the plaintiffs, and the defense was entrusted to William Hay, John K. Porter and William A. Beach. The suit was brought in an action on the case; the complaint alleging that the defendants had willfully, maliciously and wrongfully torn away and destroyed a portion of the Fort Miller dam in September, 1846, thus stopping plaintiff's mills. An indictment against the defendants had previously been tried, with the result stated in a previous chapter. The defendants plead *non cul.* and that the plaintiffs as riparian owners had no right to use the surplus waters of the Fort Miller dam, which had been erected in 1820 and since then maintained wrongfully by the state to secure slack water navigation on the Hudson river to Fort Edward. They further plead that the river was a public highway and the dam a nuisance. Judge Hand charged the jury that the state had the right to erect and maintain the dam, and that the court could not enquire into nor question its purpose therein. That the state having built the dam it could not be deemed a nuisance at law. That the plaintiffs being riparian proprietors below the dam

were entitled to the use of its surplus waters, and were entitled to damages. The jury rendered a verdict for \$150 and six cents costs. This interesting action, involving many intricate questions of riparian proprietorship, is reported at length in 9 *Barbour* 350.

At the same circuit was tried an action which well illustrates one of the modes of practice under the common law. A suit had been brought by Robert Whyllis against John Gilchrist, jr., in a justice's court in the town of Charlton, to recover wages earned and a sum of money lent. It had been pending for several years in that court and the Common Pleas, and was transferred on the demise of the latter to the Circuit. It had its final trial before Justice Hand. John Brotherson, for the plaintiff, had associated with him in the trial Edward F. Bullard and John K. Porter. Mr. Gilchrist had employed the legal firm of Beach & Bockes to defend his cause. The question hinged on the borrowed money, which had been a private transaction between the parties, and it was denied, *in toto*, by the defendant. Neither party could be witnesses, so Mr. Brotherson resorted to a feigned issue under the common law. A suit was begun before Thomas G. Young, a justice of the peace of Ballston, in favor of Samuel DeForest against Harmon Van Voorhees to recover a sum of money due as "boot" on a horse trade; it being alleged that the money received was counterfeit and that it was the same paid to Van Voorhees by Gilchrist, who

had borrowed it of Whyllis. Gilchrist was sworn as a witness in this suit and was obliged to testify that he had borrowed money of Whyllis at the time and the amount alleged and that it was genuine. Justice Young was then called by the plaintiff in the suit of Whyllis against Gilchrist, and thus the missing link of testimony was supplied, and the plaintiff recovered judgment. The statute enabling parties to be witnesses has obviated any further necessity for resorting to such shrewd practice, which, if justifiable at all, was proper under the circumstances attending it.

Among the early cases submitted to a jury under the present form of our courts was that of Lydia Wait against William Wait. It was a suit in ejectment to recover widow's dower, and involved the important principle whether a divorce *a vinculo matrimonii* affected the right of a wife's dower interest in the estate of her husband during her coverture. The suit was brought by Edward F. Bullard as attorney for Mrs. Wait; and the defendant, whose rights were about to be invaded, employed John K. Porter and Nicholas Hill, jr., to defend them against the hostile forces. Mrs. Wait had been divorced from her husband, Joseph Wait, by a divorce in chancery entered in 1825, for his unfaithfulness to his marriage vows. He died in 1845 in possession of the lands which formed the basis of this action, and they descended to his heir at law, the defendant. It was tried at the November Circuit, 1847, before Justice Paige. The facts

stated above were proved, and further that the decedent, Joseph Wait, was the owner of the lands in question prior to the decree of divorce. A verdict was found by the jury for the plaintiff; which, however, was set aside at General Term, as reported in 4 *Barbour* 192. It was again brought to trial at the December Circuit, 1848, before Justice Cady, who nonsuited the plaintiff. An appeal was then carried to the Court of Appeals by Gen. Bullard, where the non-suit was overruled, and the law as given by Judge Paige in his charge on the first trial was sustained. The opinion was pronounced by Judge Ira Harris, who held that a husband's offences against his marital vows works no forfeiture of a wife's rights. She is entitled to a support from him after a divorce *a vinculo matrimonii* under the Revised Statutes and, therefore, to dower if she survives him; and she is endowed of all lands owned by him during her coverture. A new trial was ordered, a settlement was effected. This case, in which Gen. Bullard gained so chivalrous a triumph, is reported in 4 *New York Reports* 95.

About this time Judge Bockes in the County Court held a principle in the trial of an action under the statute of summary proceedings to enable a landlord to remove a tenant which was adopted by the Court of Appeals, and is the ruling authority in such cases. Israel Young brought an action in the County Court to eject Calvin W. Dake from the possession of his store at Porter's Corners, in Greenfield. Dake had, on the thirteenth of March,

1848, hired of Young his store for one year from April 1, 1849, with the privilege of five, at a yearly rental of \$100. The lease was a parole one. April 3, 1849, Young commenced summary proceedings by an affidavit that Dake held over and continued in possession of the premises against his landlord's consent. Dake replied that he held over by permission. It was brought to trial at the April term, 1849, and Dake proved that on September 11, 1848, it was agreed by parole between him and Young that he should occupy the premises for another year from April 1, 1849. Judge Bockes held that a parole lease for one year to commence at a future time was valid under the statute, and the jury rendered a verdict for the defendant. It was removed to the Supreme Court on *certiorari*, and the verdict was affirmed. An appeal was then taken to the Court of Appeals, which was there argued by Judge Warren for the appellant and William L. Avery for the respondent, and the verdict was again affirmed. It is reported in 5 *New York Reports* 463.

Next in order of actions worthy of notice in this work was that brought by Francis Lewis against the Rensselaer & Saratoga Railroad Company. It was a suit for damages for putting the plaintiff off the defendants' cars in the autumn of 1849, at a point remote from a station. Lewis was a lad of about eighteen years (he was a brother of Nelson Lewis, the Trojan rifle marksman) living at Saratoga Springs. A militia brigade training (now

remembered by Saratogians as the "Plunket war") was about to be held, and young Lewis went to Troy and bought three barrels of oysters to sell on the occasion. This exhausted his finances, so he secreted himself under a seat on the Saratoga train. He was discovered by conductor Timothy M. Harvey soon after leaving Mechanicville, who stopped the train and put Lewis off at a point about a hundred rods above Devoe's crossing. As the train started, Lewis again attempted to get on the car, but fell and his feet were crushed. It was in the evening, but his cries soon brought relief and he was taken to the residence of George P. Devoe. One of his feet was amputated, but he died from the effects of his injuries about a year and a half later. The suit was brought to trial at the October term, 1850, before Justice Paige. The above facts were proved. The evidence on the part of the plaintiff that he was thrown from the train by conductor Harvey as he was again getting on the car was refuted by that of the brakeman, Michael Cavanaugh, and George Satterlee of Fort Edward, who was a passenger. Young Lewis' case was prosecuted by Joseph D. Briggs of Saratoga Springs, who had associated with him William Hay and John K. Porter. The company's attorneys were William A. Beach and Job Pierson. The court held as a rule of law that the defendant was liable for putting Lewis off the train at a point not a station, and charged the jury that they might take the wrongful acts of the plaintiff in seeking to

obtain a surreptitious ride into consideration, in mitigation of damages. The jury found a verdict for the plaintiff for \$65 and costs. The rule of law now is that conductors may put passengers who refuse to obey the rules of the company off from the train at a point near any farm house.

A case presenting a singular feature and unparalleled, as far as the author's reading extends, in the annals of American jurisprudence, was brought to trial before the October Circuit, 1850, presided over by Justice Paige. It was the civil action brought under the code by Abiram Fellows and David Fairbanks, jr., of Mechanicville, against John Emperor and Margaret Sheridan, otherwise called Margaret Emperor of Ballston Spa, and Owen Sheridan of the city of New York, to set aside a conveyance dated August 7, 1848, of five acres of land in Ballston Spa, made by John Emperor to Owen Sheridan, in trust for the said Margaret, for the consideration of \$100. Fellows and Fairbanks were merchants and were judgment creditors of Emperor. They sought to set aside the conveyance and thus perfect a lien on Emperor's real estate. Gen. Bullard was attorney for the plaintiffs, and John Lawrence and George G. Scott for the defendants. On the trial it was proved that in 1824, in Ireland, John Emperor was married to Margaret Fitzgerald. That a few years subsequently he deserted his wife and four children and came to New York, where, in 1834, he married Margaret Sheridan. That she lived with him until

1848, believing herself to be his lawful wife, and had borne him six children. That in the latter year his brother, Christopher Emperor, came to Ballston Spa, where John Emperor was working as a miller in the employ of James Ashman, and exposed the fact that John had a wife living in Ireland. Margaret Emperor, as she was known, then applied to her brother Owen Sheridan, for advice and, after consultation, it was deemed best that the premises should be conveyed to him in trust for her in payment for her work and services as housekeeper during the time she supposed herself Emperor's wife. Upon this state of facts being proved the jury found a verdict for the defendants, which was sustained by the General Term in May, 1852. The case so far is reported in 13 *Barbour* 42. Now comes the most singular feature of the case. Emperor and Margaret continued to live as man and wife until her death, September 25, 1855. He then married a woman named Catharine Roach, and lived with her until her death. Subsequent to this he married, by civil ceremony, Catharine Murphy. Father McGeough, the Romish priest at Ballston Spa, refused them the rites of the church to sanction their union. Emperor died from the effects of a fall in the summer of 1868, leaving an estate of several hundred dollars. A few weeks later his discarded wife, Margaret Fitzgerald, came from Ireland accompanied by her surviving son, Thomas Emperor, and they claimed the property as legal heirs. Their claims were presented to Surrogate

Waldron by Miller & Doyle of Cohoes, and were recognized by him. Catherine Murphy's claim for work, labor and services as housekeeper for Emperor was presented by Judge Scott and allowed at \$100. The children of Margaret Sheridan, who had earned the most of the property for their father during their minority, were thus barred out from inheriting it by the law, which placed the *bar sinister* upon their paternity.

The action of the people *ex rel.* George G. Scott and Cyrus Perry against Hiram Carpenter and Joseph L. Snow which was heard by Justice Willard at the February Circuit, 1851, involved a constitutional question which has never been fully settled by an appeal to the court of last resort. Messrs. Perry and Scott had been appointed loan commissioners by Gov. Bouck, with the consent of the senate, in 1843, and were in office on the second day of April, 1849, when Messrs. Carpenter and Snow were appointed their successors by Gov. Fish, with the consent of the senate. They filed their bonds and demanded the books and papers. The old commissioners refused to yield them, on the ground that all officers not specially mentioned in the constitution as to be appointed were to be elected by the people; and they denied that Carpenter and Snow had not received such an election. The latter brought an action in the Supreme Court to gain possession of the books and papers which was tried by Justice Cady and a jury at the February Circuit, 1849. The new commissioners were

represented by Abel Meeker and James B. McKean, and the old board by George G. Scott, in person. The jury found that Carpenter and Snow were not duly appointed according to law, and rendered a verdict for the defendants. A *mandamus* was next sued out by the claimants before Justice Willard. After hearing the arguments of counsel, he denied the relief prayed for in the claimants' petition, July 12, 1849. Following this, Carpenter and Snow took forcible possession of the books and papers, and the suit in question was then brought by the old board to obtain a judicial decision and relieve themselves of all responsibility in the matter. The people were represented at the trial by Attorney-General Levi S. Chatfield, and the defendants by Meeker and McKean. A jury waived and Judge Willard decided that under the constitution Messrs. Carpenter and Snow, not having been elected to their offices, were not legally in possession. The legislature of 1850, had however destroyed the gist of this action by an act abolishing the office of loan commissioner, and directed that the books and papers of the loans of 1792 and 1808 be transferred to the Commissioners of United States Deposit Fund Loan, who at that time in this county were Messrs. Calvin W. Dake and George B. Powell.

At the following October term Attorney-General Chatfield was called on to adjust another claim to office in this county. At the town meeting in 1850, held in the town of Providence, an equal number

of votes were polled for Jared C. Markham and Seneca Deuel for the office of justice of the peace. The town board being of the political persuasion of Mr. Deuel declared him elected. Markham began a suit, on the relation of the people, against Deuel to oust the latter from the office. In this he was successful, for the jury found that neither were elected, and Judge Cady declared the office vacant.

It has been said that in the economy of Nature some men are designed only to serve the valuable purpose of getting into the clutches of the law by their misdeeds, and then to do good service in furnishing subjects for the courts to use in passing upon the unalienable rights of free citizens when jeopardized by thoughtless magistrates. Such an one appears to have been one Rufus B. Pratt, who lived in Ballston Spa about a quarter of a century ago. Pratt, in company with John T. Spicer and Horatio L. Bliss, became intoxicated and riotous on the evening of Saturday, Feb. 24, 1849. Complaint was made to Abel Meeker, a justice of the peace and he issued a warrant for their arrest, with the following endorsement: "Commit them to jail until Monday next for examination." The warrant was delivered to Harvey N. Hill, a constable, who, with the assistance of the late Daniel D. Jones, arrested Pratt and took him to the jail, where he was confined, against his will of course, until Monday. He began an action for assault and battery and false imprisonment against Meeker, Hill and

Jones, by his attorneys John Brotherson and William B. Litch. William A. Beach tried the suit for the defendants at the June Circuit, 1851, before Justice Cady. The jury found a verdict for the plaintiff for \$76 and costs. The case was appealed to the General Term, and is reported in 16 *Barbour* 303, where the report of the opinion of the Supreme Court concludes :

"The magistrate no doubt acted from an honest belief that he was authorized to make the endorsement on the back of the warrant. But it was an excess of jurisdiction, and wholly illegal. The law watches the personal liberty of the citizen with vigilance and jealousy ; and whoever imprisons another in this country must do it for lawful cause and in a legal manner."

The action brought by George Young, jr. against the Washington County Mutual Insurance Company which was tried before Justice Willard at the June term, 1852, by Frederick S. Root for the plaintiff and William A. Beach for the defendant, was intended to recover a policy issued to plaintiff by the defendant for \$500, on his dwelling house, in the town of Greenfield. From the printed case, as reported in 14 *Barbour* 545, I learn that the plaintiff's house was burned in the night of June 18, 1850, and that its loss was occasioned by the burning of his store, then in process of erection on the site of the former store, which had been burned in the previous March. The company rejected Mr. Young's claim on account of said rebuilding of his store, holding that a carpenter's risk is an increased hazard, and one that they did not assume in the

issuance of the policy. The plaintiff proved that due care had been used on his part to prevent the destruction of his house and store. Judge Willard held that the plaintiff was entitled under the policy to rebuild on the foundations of his former store, using reasonable care against accidents, and in such case was entitled to recover. Judgment was entered for the plaintiff on the verdict of the jury for \$562.46 and costs, which was affirmed in the Supreme Court at General Term.

Concerning the action of Hiram Fullerton against James Viall, Isaac T. Grant and Samuel A. House there is a mystery which probably will never be fully penetrated until all secrets are revealed. Mr. Fullerton was a carpenter and pattern maker, who worked for several years in the employ of the firm of Viall & House, stove founders, at Mechanicville. Believing them honorable and trustworthy, he had placed quite a large sum of money in their hands and taken their note. But he found, as did many others, his confidence abused when the firm became, through mismanagement, hopelessly bankrupt and made a general assignment, September 1, 1851. Viall had to save a portion of his private property from the general wreck, which was believed to be no fault of his, previous to the assignment deeded his residence to his brother-in-law, Isaac T. Grant. Fullerton and other creditors soon placed their claims in the form of judgments of the Supreme Court. His attorney in these proceedings was his brother-in-law, James B. Houghtailing, of

West Troy. In 1852, he began an action against Viall and Grant to set aside the conveyance as fraudulent and made with intent to defraud creditors of the bankrupt firm. His attorneys were Isaac C. Ormsby and Edward F. Bullard. The defense had secured the eminent legal firm of Pierson, Beach & Smith of Troy. The complaint alleged that Viall executed the conveyance with intent to defraud his creditors, and that Grant accepted such deed knowing its nature and with due notice of plaintiff's claim; and that but for such conveyance plaintiff's judgment against Viall and House would be a lien against such real estate, and asked that the conveyance be declared null and void. It was tried at the June term, 1854, before Justice Hand. The jury found a verdict for the plaintiff, and a judgment setting aside the deed from Viall to Grant and awarding \$1,905 damages was entered on motion his counsel, June 8, 1854. The defendants asked leave to file a bill of exceptions, which was granted to be heard in the first instance at the General Term. It was affirmed by the Saratoga General Term, December 31, 1855. The Court of Appeals affirmed the verdict June 19, 1858. The full case and points are filed in the State Library, Volume 73, case No. 9; also, it may be found reported in 42 *Howard* 294. The mystery connected with the case was the disappearance of Fullerton in the summer of 1855. He was an unmarried, middle aged man of steady, industrious habits, and possessed of considerable means. He left his home in Stillwater to go to the

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West. He was last seen, by any one him and has disclosed his whereabouts, a few days later in Cleveland, Ohio, by Mrs. Ellen Swartwout, with whom he formerly boarded in Mechanicville. He called at her house and told her that he was en-route to Chicago, and was to take the boat that evening. He belonged to an eccentric family, and some of his relatives entertain the idea that he is yet alive. To support the idea, they quote the fact that a bachelor uncle of his, Richard Fullerton, mysteriously absented himself and after the long interval of *forty-five* years, he returned to his old home in Stillwater to his brother who had long mourned his "lost Derrick" as dead. Conceding that Fullerton has "gone before," Viall is the only survivor of the parties to this action. He was completely wrecked in fortune by this judgment. Like men similarly treated by the "fickle goddess" he was ruined by overweening confidence in the men with whom he was associated and the times in which he was actively engaged in paddling his bark across the whirlpool of business. Crippled alike in body and fortune, he finds a home with a brother who has been more successful in the battle of life. Grant had previously to this suit sold the premises to Elisha Howland, a bona fide purchaser. And, the judgment in this action established the principle that the moneys received from such purchaser may be recovered from the seller. It was so recovered from Grant on an execution, and paid to the administrator appointed on Fullerton's estate.

THE BENCH AND BAR

term, 1856, was tried a case which takes us back beyond the Revolution, and brings prominently to view two men who were active participants in "the days that tried men's souls"—Col. Peter Ganzevoort, the hero of Fort Stanwix, and Major Hugh Munro, the tory leader of a raid in the town of Ballston, the mention of whose name causes the blood to tingle in the veins of the descendants of those upon whom he visited his atrocities. It was the suit of George F. Munro, a grandson of the partisan leader, against Elijah Merchant of Moreau, brought to eject him from a part of lot 3 in the 20th allotment of the patent of Kayaderosseras. Both parties claimed to possess a valid title derived from Rip Van Dam, one of the patentees. The plaintiff's attorneys were George F. Munger of Rochester, and Theodore F. Pomperoy of Auburn. They were assisted by Deodatus Wright and Clark B. Cochrane. In the higher courts, to which the case was carried, they had the counsel of Judge Sanford E. Church. Against them William A. Beach was pitted, single handed after the election of Judge Rosekrans to the Supreme Court bench. Munro claimed title by will of Van Dam, empowering his executors to sell his real estate. Secondly, a deed from Robert Livingston, jr., surviving executor, to Jacob Walton, Isaac Low and Anthony Van Dam, dated October 24, 1771, conveying all of Van Dam's interest in the patent. Thirdly, a deed from Walton, Low and Van Dam to Hugh Munro, August 30, 1774. Fourthly, the death of

Hugh Munro at Edwardsburgh, Canada, leaving an only son Hugh Munro, father of the plaintiff. Fifthly, the birth of the plaintiff at Ballston Spa, in 1804. Munro at the time of this action lived in Rochester. The defendant's title was based on a deed from Gerard Walton, attorney for Anthony Van Dam (though no power of attorney could be proven), to Peter Ganzevoort, June 17, 1797, and the inheritance of the lands by his sons, Herman and Peter Ganzevoort, on his demise. Secondly, a deed from the Ganzevoorts to Ransom Sutphin in 1841, who conveyed the lands to defendants in 1848. Thirdly, the alienage of the plaintiff and Hugh Munro, father and son. A judgment was entered for the plaintiff, *pro forma*, at the May term, 1856, held by Justice James. It was affirmed in the General Term, and an appeal was taken by the defendant to the court of last resort. In the Court of Appeals it was held that Major Munro was a British subject who lived near Fort Miller at the outbreak of hostilities. He adhered to the crown and went to Canada. That Hugh Munro, jr. was also a British subject by his own acknowledgment. That the plaintiff, having been born in this state, was a citizen, although his mother simply came to Ballston Spa for that purpose and returned with her child to Canada. That Hugh Munro, sr. was never attainted of treason, hence his heirs could inherit and hold against all others except the state. That the claim of adverse possession, only showing the cutting of timber on the premises, was not

clearly proven ; but, as it gave a shadow of title a new trial was granted. The claim was then compromised. The case is fully reported in 26 *Barbour* 383 and 28 *New York Reports* 9. Munro also brought an ejectment suit against Peter Ganzevoort, the younger, to dispossess him of the well known Ganzevoort estate. He was non-suited in the June term, 1855, by Judge James. The General Term reversed the non-suit, and on the trial in the September term, 1864, before Judge Bockes, the defendant proved a clear case of adverse possession and the complaint was dismissed with costs.

An interesting case of great value to assessors in assessing personal property was tried at the May term, 1856, before Justice James. It was the civil action brought by John G. Young and others against the assessors of the town of Hadley to vacate an assessment of the personal property of the plaintiffs made by Jefferson Jeffers and his associates of the board of assessors in June, 1854. The plaintiffs had come from Ossipee, N. H., in April, 1854, and taken a contract in the town of Hadley on the Saratoga and Sackett's Harbor railroad. They brought their families with them and established their residence in the town, temporarily, as they claimed. Their personal property was assessed, a tax was levied and the town collector, by order of the defendants, made a distress on their premises and their property was sold. The defendants now brought an action for relief by A. J. Cheritree, attorney. The defendants were represented at the

trial by Alembert Pond and Judge Hay. Under the direction of the court the jury found the plaintiffs were *bona fide* residents of the town at the date of the assessment, and rendered a general verdict for the defendants.

An interesting case involving the competency of evidence was the civil action of Erastus Davison against Philip J. Powell, tried in our county in 1857. This was an action to recover an unpaid balance for sawing defendant's lumber, at the plaintiff's mill at Jobville in the town of Stillwater, with a bill of items annexed and verified. The defendant denied the allegations of the complaint as to the days and extent of work; and plead waste of lumber to the amount of from 14,000 to 15,000 feet, valued at from \$200 to \$300. Judgment was entered for the plaintiff for \$108.73. I. C. Ormsby, for plaintiff; E. F. Bullard, for defendant. A bill of exceptions was filed in the Supreme Court on alleged errors in the admission of incompetent testimony. The General Term held that the defendant's answer was merely a negative pregnant, forming no issue that denied the correctness of plaintiff's complaint. It also held that the memoranda of a sawyer kept on boards and copied accurately in a book is a book of original entries, and that the copy is competent evidence. 16 *Howard* 467.

Lewis DeGroff against the American Linen Thread Company was the title of an action brought by the plaintiff, who was a merchant doing business in Mechanicville. It was twice heard at Cir-

cuit and sent back by the General Term to the Circuit for trial. It was finally tried at the January term, 1857, before Justice Rosekrans. Gen. Bullard was plaintiff's attorney, and Judge Bockes and Deodatus Wright were employed by the defendant. It was an action for breach of contract. The defendant, a corporation doing business under the laws of this state at Mechanicville, had in its employ a large number of persons. Previous to March 1, 1853, it had conducted a general store and controlled the patronage of its employees to a great extent. On that day, the trustees of the corporation leased the store and sold their stock of goods to the plaintiff, one of the conditions being that they should carry the general trade of the employees of the company to the plaintiff; and in case of a failure, the sum of \$300 was stated in the contract as liquidated damages. Abriam Fellows, a rival merchant, soon after was elected one of the trustees of the company and succeeded in diverting the trade to his store. On proof of this statement of facts the plaintiff rested his case. The defendant plead that the trade had not been diverted; that the trustees had no authority to make such a contract and seek to bind their successors; and, that it was void as against public policy. A verdict was rendered for plaintiff for \$375. The judgment was reversed at General Term, but it was affirmed in the Court of Appeals. It is reported in 21 *New York Reports* 124. The General Term by Justice James, Rosekrans concurring, held that the plaintiff

ought to be non-suited and that there were five points in the case either of which was fatal to the plaintiff. As the case had already been tried three times, Gen. Bullard took the risk of going direct to the Court of Appeals instead of going back for a new trial and non-suit. In order to take the step the plaintiff had to stipulate that he would risk final judgment against him if Justice James was right on any point. Judge A. B. Olin and John Lawrence in the early stages were counsel for the defendants.

Another substantial victory was won by Gen. Bullard in the action brought by Nancy Mors against Elisha Mors, William H. Mors and Henry G. Ludlow. It was brought to recover a wife's inchoate dower interest in certain lands in Waterford, which she had conveyed away by a deed to which her signature was obtained under false and fraudulent pretenses made by her husband, Joshua Mors, that he wished to sell his real estate and remove to the west with his family. After securing her signature to the conveyances, he went west and procured a "Chicago" divorce. The suit was brought to trial in the September term, 1858, before Judge James. The defendants were represented by Pierson, Beach and Smith of Troy and had the counsel of Judge Romeyn. The jury found from the evidence that prior to the acceptance of the deed defendants, Elisha Mors and Henry G. Ludlow had knowledge of Joshua Mors' intention to desert his family. That Joshua Mors executed the

deed to Elisha Mors July 5, 1856, with intent to abandon his wife and child, and that he secured her signature by fraudulent representations. That Elisha Mors was cognizant to this fraud when he took the deed, and that William H. Mors knew of the same when he took the deed of the premises from Elisha Mors, March 2, 1857. The jury found a verdict for the plaintiff to endow her of her inchoate rights in the lands thus fraudulently conveyed, and that the amount of her alimony be collected from the property. The Court of Appeals by this decision established the correct principle that a wife can attach a fraudulent conveyance made by her husband with intent to defraud her of her support and rights, the same as a creditor.

In January, 1860, Seymour Chase, proprietor of the *Ballston Atlas*, a newspaper then published at the county seat, by the direction of David Maxwell, then clerk of the board of supervisors, published in it the "Abstracts of Town Accounts for 1859," which the law requires the clerk to print in some newspaper. He charged the county, according to the then legal rates, fifty cents per folio for one insertion, amounting to \$60. He submitted his bill to the supervisors in 1860, and it was audited by them at \$30. He accepted this sum under protest, and began an action in a justice's court against the "County of Saratoga" for the balance. He recovered a judgment which was affirmed by Judge Crane in the County Court. An Appeal was then taken to the Supreme Court which was heard in

General Term in May, 1861. After hearing Charles S. Lester for the appellant, and Seymour Chase, appellee, in person, that tribunal decided that the action was wrongly entitled. Actions against the county can only be brought against the supervisors of the county. It, however, passed upon the merits of the action. While the statute of 1847 named fifty cents per folio as the price of the first insertion of a legal notice, it clearly meant it to be the *extent* of the price and left in the power of the auditing board to award a lower sum. The supervisors are authorized by statute to audit such claims. They having acted in a judicial capacity, their work is not reviewable by this court. Relief might have been sought by a *mandamus* against the supervisors. Judgment reversed. 33 *Barbour* 603.

Actions against sheriffs are frequently brought to recover alleged damages arising from the seizure of one person's property on an execution against another. From the list found in the minutes of our Circuit Court I have selected the suit of Lorenzo Baker against George B. Powell, sheriff, as furnishing the most interesting features. It was tried in May, 1861, before Justice Rosekrans and a jury. I. C. Ormsby was plaintiff's attorney, and E. F. Bullard, the defendant's. The action arose from the following facts: Baker, the plaintiff, had a chattel mortgage on a stallion team owned by Rev. John P. McDermott, Romish priest at Mechanicville. ~~A~~ **A** ~~bram~~ **L. Brewster**, a deputy sheriff, seized

the team on an execution against Father McDermott. While the horses were in his possession under the levy he used them in his private business, and one of the horses died. The plaintiff, as mortgagee, then brought suit against sheriff Powell, alleging that his mortgage interest had been sacrificed through the culpable negligence of Brewster, the deputy sheriff. On the trial it was proven that McDermott was a fast and reckless driver of the team while in his hands, and that Brewster used ordinary care of them while he had them after the levy. The jury found that Brewster exercised the care of the horses required by ordinary prudence, and that they were not injured by him in his private business. Judgment was entered against the plaintiff for costs.

At the same term was tried the action brought by Charles Neilson against Abraham Post, executor of Israel Post, deceased. The plaintiff's attorneys were Hon. Ira Shafer and ex-judge Deodatus Wright of Albany. The defendant had the aid and counsel of ex-judges Crane and McKean, and William T. Odell. The action was brought to recover a sum of money lent by Neilson to the decedent, of which he had as evidence a note for \$200. The defendant denied that his father, Israel Post, ever executed the note; and sought to prove that the old gentleman, several years previous to his death, had divided his property among his heirs, and made his home with one of his sons, and was not in the need of negotiating loans at the time alleged in the

note. The plaintiff testified very circumspectly to the occurrence of the loaning of the money and the giving of the note, and the signature was pronounced genuine by many persons residing in Stillwater, who were acquainted with the handwriting of Israel Post. One of his sons testified directly that it was a forgery of his father's signature; but, under the searching and ingenious cross-examination to which he was submitted by Mr. Shafer, it transpired that his self interest blinded his eyes, so that at one exhibition of a recognized genuine signature of his father he said it was genuine, and on another he said it was not. Defendant's counsel objected to this mode of cross-examination, but Judge Rosekrans permitted it as allowable under the circumstances, as the witness was making a grave charge against a worthy old man. Mr. Neilson was the well-known author of a "History of Burgoyne's Campaign." Judge Wright then summed up the case in his happiest vein, mixing law and satire, argument and denunciation in unstinted terms. It was his last appeal to a jury of his native county, and it was an effectual one. The jury found a verdict for the plaintiff for \$356.45 and costs.

Next of importance is the ejectment suit brought by William V. Clark and Clark J. Rice against John O. Lyon. The plaintiff claimed title by conveyance granted under the patent to John Glenn and forty-four others. The land in suit was a one hundred acre farm in the town of Edinburgh. There was no evidence that the plaintiffs, or their

grantors, had ever made any improvements on the place, or been in personal possession other than by deed. The defendant proved title by a warranty deed from his grantor, and a peaceable possession for nearly forty years, during which period his title had been unquestioned, and he had reduced a large part of the farm to a state of cultivation. He claimed that if his grantor was a "squatter" it was unknown to him, and could not at this time work to his prejudice. Joseph Covell, John M. Carroll and William Gleason were the plaintiff's attorneys. The defense was entrusted to Gen. George S. Batcheller and Alembert Pond. It was tried at the December term, 1861, before Judge Rosekrans, who held that a clear case of adverse possession was established by the defendant's pleadings and evidence, and granted the non-suit asked for by his counsel.

On the principle that "Eternal vigilance is the price of Liberty," and consequently their solvency, insurance companies are prone to question the propriety of many of their policies on risks taken by their agents when called on to adjust a claim after a fire has terminated the existence of the property insured. Particularly so, if there has anything transpired to furnish a clue to evidence that the party assured had imposed upon the company, or its agent, at the time of the assuming of the risk, or, subsequently, as it may happen. Such was the case assumed to exist when the Indemnity Fire Insurance Company of New York ; the Hope Fire

Insurance Company, do. ; and the Manhattan Fire Insurance Company, do., refused to adjust and pay the policies issued by them to Patrick Kelly of Waterford, on certain property in Chicago, which had been destroyed by fire July 13, 1861. A test suit, entitled "Patrick Kelly against the Indemnity Insurance Company," was tried in our county, in the September term, 1862, before Justice James and a jury. The plaintiff was represented by Robert Sewell, attorney, and William A. Beach, counsel. The Indemnity Insurance Company had for its attorney ex-Judge Gilbert Dean, the Hope Insurance Company was represented by Frederick A. Conkling and the Manhattan Insurance Company by E. H. Bowne. The plaintiff presented his policy and proof of loss in evidence. The defense was that the fire originated in the third story of the building in a gambling saloon, which was kept there with the knowledge of the plaintiff and without that of the defendant, or its agent. Secondly, that the goods insured were the property of defendant's son-in-law, and fraudulently insured in Kelly's name. Finally, that a portion of the goods belonged to a Boston boot and shoe firm, and were held to be sold on commission, and that the plaintiff had fraudulently altered his books to conceal that fact. After hearing the evidence, the jury found a verdict for the plaintiff for \$2,708, and judgment was entered for that sum and costs by his attorney. This judgment was affirmed, both at the General Term and the Court of Appeals. The case is re-

ported in 38 *New York Reports*, 322. Subsequently, Kelly received judgments against the Manhattan Insurance Company for \$2,946. 72 ; and against the Hope Insurance company for \$5,276.57.

In the year 1861, one Isaac Baker, a judgment debtor, was committed to the county jail on an execution against his body. Subsequently he executed a bond to Sheriff Powell, with William F. Rowland, surety, conditioned to pay the judgment against him if he absented himself from the "limits" until discharged therefrom by law. The sheriff, understanding that it was a judgment recovered in justice's court, filed the petition and bond and released Baker, who at once absconded. Powell, finding that it was a judgment in the Supreme Court, then began a suit on the bond against Rowland by Chapman & L'Amoreaux, his attorneys. An answer was filed by C. S. Lester, defendant's attorney, pleading that Baker's was a voluntary escape with the consent of the sheriff. The action was tried at the January term 1863, before Justice Platt Potter. The jury found that the sheriff was blameless in the matter, and judgment was rendered in his favor for \$296.40 damages and costs.

The suit brought by Antha A. Wait against Joseph R. Wait, tried at the January term, 1863 ; and of the same plaintiff against David W. Wait, tried at the same term, cover about the same grounds, and may be embraced in the same paragraph. The former was brought to annul an as-

signment of property made by Antha A. Wait to Joseph R. Wait, on the ground that it was executed through fear of her husband, David W. Wait. A verdict was rendered for the plaintiff on the trial. At Special Term before Justice Potter, the same month, in another action between the same parties, a decree was entered setting aside a deed executed by Antha A. Wait to Joseph R. Wait recorded in Book 92 of deeds, page 377, on proof of the same state of duress. E. F. Bullard was attorney for Mrs. Wait, and John Brotherson and Clement C. Hill for the defendant. The action brought by Mrs. Wait against her husband was to obtain a divorce *a mensa et thoro*, on account of alleged excessive cruelty on his part, rendering it unsafe for her to live with him. Mr. Bullard was her attorney in this action, also. The defendant's attorneys, John Brotherson and Clement C. Hill, plead a general denial, and set up a counter claim for a divorce *a vinculo matrimonii* from defendant, alleging that she had proved unfaithful to her marriage vow of chastity. The defense was ignominiously routed on the trial, and the jury rendered a verdict for the plaintiff for the relief demanded in her complaint. The court entered a decree setting aside to her use her personal estate and certain articles of personal property, named in the decree, and ordered that the defendant execute a bond to pay the defendant seventy dollars yearly as alimony, in half yearly payments. This he entirely neglected to do, and, on measures being taken to

compel his performing the same, he found Jonesville to be an unhealthy section and since 1863 he has been "watching and waiting over the border," residing at Harlow, Frontenac county, Ontario, excepting when making surreptitious visits to the States. An execution against Mr. Wait having been returned unsatisfied, Mr. Bullard had George L. Terry appointed receiver in proceedings supplementary, and commenced a suit in his name against William Wait and John Martin to collect a note held by David W. Wait against William Wait, originally drawn for \$3,900, on which \$2,500 was yet due. The defendant, William Wait, by Beach & Smith his attorneys, plead payment. John Martin lived in Canada and was not served with personal process, but legally by advertisement. The suit was tried at Special Term before Judge Bockes September 10, 1864, and a judgment was entered for plaintiff for \$1,538.59 damages and costs. The General Term affirmed the judgment, but the Court of Appeals granted a new trial September 29, 1871. The second trial was heard at the Saratoga Circuit, May 20, 1873, before Justice Bockes with a jury. After hearing the testimony for the plaintiff, the defendant by J. S. L'Amoreaux, moved for a dismissal of the complaint on the grounds: That the plaintiff had failed to prove a cause of action. That the proof failed to show any evidence of fraud on the part of William Wait, or any proof of fraud on the part of any one in the transfer of the note. The motion was granted and

judgment was entered for the defendant, William Wait, against Terry, receiver, etc. This judgment was affirmed at General Term and in the Court of Appeals, and thus the matter now rests. On the trial before Justice Bockes, Wait produced proof that he had paid the note to Martin, an entire stranger. On the second trial no such proof was offered. A judgment by default was entered against Martin, on default of appearance.

Some men never appear to be happy unless entangled in the meshes of a suit at law. Such an one appears to have been the late Abraham Best of Clifton Park. He had as strong a constitutional aversion to paying taxes as do the noted Smith sisters of Glastonbury, Connecticut. In the year 1863, Adam V. V. Pearse was collector of the school district in Clifton Park in which Best resided. A tax warrant having been placed in his hands on which a certain amount was set opposite the name of Best, he called upon him for the amount at his residence. After making some querulous objections, he invited Pearse into his house and took him to an upper room. He there left him and went out, locking the door after him. After waiting in vain for quite a time for his return, the collector raised a window and jumped to the ground. He brought a civil action for an assault against Best which was tried at the January term, 1864, before Justice Platt Potter. George G. Scott was plaintiff's counsel, and J. Summerfield Enos appeared in behalf of the defendant. A judgment was entered

against Best for \$50 and costs. Soon after this, he was adjudged a lunatic on the petition of his relatives, and subsequently he died at the Marshall Infirmary in Troy.

Mention was made in a previous chapter of the indictment against the Whitehall and Waterford turnpike company for maintaining a public nuisance, and how that the last gate on the road was demolished by a mob. The stockholders having abandoned their old style and name and re-incorporated under the general law as "The Waterford and Stillwater Turnpike Company," a proceeding was instituted by an action in the name of the People of the State of New York to annul their assumed franchise, and to declare the road leading from Waterford to the village of Stillwater along the west bank of the Hudson river to be a public highway. The People were represented by Attorney-General Daniel S. Dickinson, Charles S. Lester, John O. Mott and C. A. Waldron. The attorneys for the company were James P. Butler and Edgar L. Fursman. The action was brought to trial before Justice Platt Potter at the January Circuit, 1864. The jury found that the turnpike was not constructed with a hard roadbed, or with ditches on each side, as required by law, and rendered a verdict for the relief demanded in the People's complaint with costs of the action. The directors of the Turnpike Company sought to reverse the judgment entered on this verdict but it was affirmed.

in the Court of Appeals, January, 1866. It is reported in 2 *Keyes' Reports* 327.

The action brought by Harvey Losee against Coe S. Buchanan, Daniel A. Bullard, C. C. Clute, J. W. Clute, J. D. Clute and the Saratoga Paper Company was closely contested by all the defendants. The suit was brought for the plaintiff by Hon. Alembert Pond of Saratoga, and Judge Parker of Albany. The defendants Buchanan, Bullard and the Paper Company were represented by General Bullard and Messrs. Beach & Smith, the defendants Clute Brothers secured the services of Hon. Judson S. Landon of Schenectady. The *res gestæ* of the action was the damages done to plaintiff's buildings by the explosion of the rotary bleach boiler in the Saratoga Paper Company's paper mill February 13, 1864, whereby pieces of the boiler were thrown through plaintiff's adjoining structures. The defendants Buchanan and Bullard were the trustees of the company, and the Clute brothers of Schenectady were the makers of the boiler. It was brought to trial in the January term, 1866, before Judge Platt Potter and a jury. A nonsuit was entered by the court as to the Clute Brothers, they having proved satisfactorily that the boiler had been duly inspected and pronounced sound. The plaintiffs relied on the *dicta* of the Court of Appeals in Hay against Cohoes company (2 *New York Reports* 159) to sustain their points; particularly as it was an opinion adopting the points prepared in that case by General Bullard,

who prosecuted Hay's case to a successful termination. A verdict was rendered against the other defendants for \$3,420. The General term reversed the judgment of the Circuit, holding that negligence must be proved, as the defendants stood behind the inspector's certificate that their boiler was sound, and granted a new trial. It was had in the January term, 1867, before Judge Rosekrans, and the jury found that the paper company were guilty of negligence and rendered a verdict for the plaintiff against it for \$2,703.36. Judgment for costs against the plaintiff was entered in favor of Messrs. Buchanan and Bullard. Another appeal was taken by the plaintiff and the General Term reversed the whole judgment. It was finally settled by the Court of Appeals affirming the judgment as to Buchanan and Bullard, holding that trustees are not personally liable for their principal's acts, and also affirming it as to the Paper Company's liability. It is reported in its different stages in 61 *Barbour* 86, 42 *Howard* 385 and 51 *New York Reports* 476. Suits were also commenced against the Saratoga Paper Company for causing the death of a Mr and Mrs. Jeremiah Dwyer by the said explosion. They were entitled Dwyer, admr. agst. Saratoga Paper Company and William McNamara, admr. agst. the same. They were tried at Circuit, under the foregoing rulings of the higher courts and a verdict of \$1,000 was entered in the first and \$2,393.37 in the second action. The same attor-

neys appeared in these suits as in that brought by Mr. Losee.

The action brought by Oren Humes, a Greenfield farmer, against his brother agriculturalist, Chauncey L. Williams, is deserving of notice from its singular feature of damages as alleged in the complaint. It recited that the defendant, in the summer of 1866, over-stocked a ten acre lot on his farm through which a small stream passed to the plaintiff's farm, and thereby caused the water to flow into plaintiff's close roiled, impure and unfit for use for his cattle to drink. This singular issue of riparian proprietorship was brought to trial before Justice Rosekrans at the January term, 1867. The jury found a verdict for the plaintiff, assessing his damages at five dollars. John W. Crane was plaintiff's attorney, and L. B. Pike for the defendant.

For the last ten years there has hardly been a term of either the civil or criminal courts held in this county at which some issue in the "Sweet family feud" has not appeared for trial. The first action in this "Pandora's box" was that tried at the September term, 1867, before Judge Rosekrans, in which Mary S. Van Deusen sought to eject her brother, Sylvester Sweet, from a certain farm in Moreau. They were the children of one Sylvester Sweet of that town, who died in 1866. The plaintiff claimed under a devise contained in her father's will, dated September 1849. The defendant replied that he was in occupancy as tenant of Henry Jacobi, son-in-law of Sweet, deceased, who claimed title

under a deed alleged to have been executed by the decedent, April 20, 1864. The will was not disputed. The plaintiff replied that this deed was executed by her father when he was *non compos mentis*. Evidence was given to prove that decedent was insane from 1862, and that a commission of lunacy was granted in 1865, on the report of which Judge Hulbert had declared him to be a lunatic. The court denied the motion for a non-suit, but charged the jury to find for the plaintiff if they found the decedent to have been insane in April, 1864. A verdict was given for the plaintiff. The judgment was affirmed in both General Term and the Court of Appeals. See the reported case in 51 *New York* 379. Lewis Varney and Judge Hay were plaintiff's attorneys, and Sweet and Jacobi's claims were ably sustained by Messrs. Pond & French, and Judge Brown of Glen's Falls.

Another action having its animus engendered by this Moreau "vendetta" was that brought by James Le Baron against Howe for damages sustained to his character by reason of the false and slanderous stories uttered by Howe, to the effect that Le Baron had burned his buildings, which were insured in the Watertown Agricultural Insurance company, with intent to defraud the insurance company. The trial occupied the whole of the May term, 1869, before Justice Bockes. The jury found a verdict for the plaintiff for \$25. It was the last cause tried by Judge Hay, at our Circuit, who was associated with Mr. Varney for the plaintiff. The

defendants attorneys were Judges Mott and Brown of Glen's Falls.

The suit of William P. Clothier, of Corinth, against Adriance, Platt & Company, of Poughkeepsie, was brought under the Code to have a certain note drawn by him declared void. J. W. Hill was his attorney. Mr. Clothier claimed that he signed the note under fraudulent representations made by a man who was acting as the defendant's agent in selling mowing machines, being induced to sign a blank note when he supposed it was filled in with a small sum. This swindling of farmers by a set of traveling sharpers has been quite prevalent for some years past. Men who would not lend their name to aid the credit of a struggling honest neighbor have readily signed the various "sugar coated" notes presented by strangers with oily tongues and the impudent pertinacity of the Evil One. The agent filled up the note with a sum satisfactory to his plans and passed it to his principals. The action was brought to trial before the September Circuit, 1867, before Judge Platt Potter. Clothier was non-suited on motion of Messrs, Chambers & Pomeroy, the defendants attorneys. It was sustained in the Supreme Court, but the Court of Appeals sent the action back for a new trial. It was re-tried before a referee, who reported in Mr. Clothier's favor. The defendants appealed and the General Term, in May, 1876, reversed the judgment; Justice Bockes dissenting and holding that an instrument fraudulent in its inception can never

acquire a legitimate nature. Mr. Hill has now token another appeal to the court of final resort.

Of a similar nature was the foundation of the civil action brought by Douglas Cheesebrough against Thomas H. Tompkins. Mr. Tompkins, who was a farmer living in Greenfield, near Glen Mitchell, was induced by one Brown, agent for George W. Palmer, to accept the agency for the sale of a patent mowing machine knife grinder. It was, however a patent swindle. The farmer was induced to sign a certificate of agency promising to pay a certain sum after he had sold a certain number of machines. By an ingenious typographical device, the certificate was so printed in blank that a portion of the right end of it could be cut off and leave a promissory negotiable note. Mr. Cheesbrough, who was a merchant in Saratoga Springs, purchased among many others, the note purporting to have been signed by Mr. Tompkins; Brown endorsing Palmer, the payer's name. In common with other farmers who had allowed their curiosity to get the better of their common sense in signing these contracts, Mr. Tompkins refused to pay the note. The action brought by Mr. Cheesbrough against him was regarded in the nature of a test suit. Hon. John W. Crane was plaintiff's attorney and Joseph A. Shoudy defended Mr. Tompkins against the unjust claim with the counsel of Hon. William A. Beach. It was brought to trial at the September term, 1868. Brown, the "agent," was conspicuous for his absence. Mr. Palmer, in his tes-

timony was uncertain that he ever authorized Mr. Brown to sign his name in the negotiation of this note to the plaintiff. Mr. Cheesbrough was closely cross-examined by Mr. Beach. To the question, "At the time you purchased this note did you know it to have been obtained by fraud," he declined to answer. To the question, "Did you not know it to be a 'mowing machine grinder' note," he also declined to answer. Mr. Beach then asked for a non-suit on the ground that no authority had been shown for Brown to endorse the note for his principal; and, that Mr. Cheesbrough by his refusal to answer the above questions showed that he was not a purchaser in good faith. Justice James nonsuited the plaintiff, and he was upheld at General Term and by the Court of Appeals. The holders of the "bogus notes" throughout the county found it impossible to collect another dollar, and the "scrip" is now valuable as paper stock at the market quotations.

The action of the First National Bank of Ballston Spa against the Insurance Company of North America was one of a series of actions brought to recover policies issued by leading insurances companies upon the property of the Pioneer Paper Company. The Bank was the assignee of the policies, holding them as collaterals to a loan. These suits were at the terminus of a long litigation among the stockholders of the Pioneer Paper Company. To give the history of this litigation in the State and United States courts would swell our

volume beyond its intended proportions. It is reported under its various titles in 57 *Barbour* 127, 568 and 583 ; 59 *Barbour* 16 ; 62 *Barbour* 468 and 36 *Howard* 102. For our purpose it is sufficient to state that about 1860, Coe S. Buchanan, Elisha Comstock, William Wilson and Solomon A. Parks commenced the manufacture of paper at West Milton under the name of the Pioneer Paper Company. For a time they were successful, but the influx of of wealth was too much for the ambitious brains of Comstock and Buchanan and each sought to drive the other out of the concern. Comstock by a decree of the courts got possession of the mill and leased it to C. W. Weeks and Abijah Comstock. During this time he negotiated the loan at the First National Bank. Buchanan secured a reversal of the decree and was put in possession. A judgment was recovered by the Bank on its loan and Electus Dye, a deputy sheriff, went to the mill on a certain day with an execution. With Elisha Comstock he essayed to watch the mill during the night, and dismissed the regular watchman. During the night the mill was destroyed by an incendiary fire. Dye and Comstock were in the company's office, a few rods distant from the mill. The insurance companies held that the levy and dismissal of the watchman violated their policies and refused payment. At the trial in the September Circuit, 1870, before Justice Bockes, a non-suit was entered. J. S. L'Amoreaux was attorney for the Bank, with Beach & Smith as counsel. Judge

Parker was the attorney for the defendant. On appeal to the Supreme Court, it was held that a levy by a sheriff does not absolve a party insured from maintaining the watch demanded in the policy, and that the deputy sheriff in an office two rods away from the mill did not fill the duty and office of watchman. 5 *Lansing* 203. A further appeal was carried to the Court of Appeals and the nonsuit was sustained. About this time the defunct Pioneer Paper Company was declared a bankrupt by the United States district court. Their mill site and privilege was sold by J. A. Shoudy, assignee in bankruptcy, to Hon George West.

The doctrine of "ancient lights" and "highway privileges" are as old in the common law as the rights of riparian proprietorship to the waters flowing in a stream. The rule in each instance, to use the quaint language of Blackstone, dates back to the time "when the mind of man runneth not to the contrary." Rival hotel proprietors at fashionable watering places are as jealous of their rights now as were the first mill owners in the early days of our country. An attempted invasion is sure to be fought in the courts, and sometimes by force. Such a cause of action arose in Saratoga Springs in 1869. Warren Leland was the owner of the Grand Union Hotel, and Henry H. Hathorn of Congress Hall. Mr Hathorn had purchased a building on the east side of Broadway, and separated from his hotel by Spring street. He fitted a ball room in the second story of the building and

constructed an iron bridge from the third story of Congress Hall over the street to the ball room. Mr. Leland, who had paid an assessment of \$1,040.35 for the opening and grading of Spring street, deemed this an invasion of his vested rights, particularly as the bridge was directly in front of and obstructed the view from his hotel. He began an action in Westchester county, by Robert Cochrane, attorney, on the relation of the People against Mr. Hathorn. Charles S. Lester and Samuel Hand, for the defendant, moved to change the *venue* to Saratoga county. It was denied at Special and General Term in the second judicial district, but was granted by the Court of Appeals, March, 1870, on the ground that actions for damages to real property must be tried in the county in which it is situated. See 42 *New York* 547. The action was then noticed for trial at the January Circuit, 1871, before Judge Rosekrans. Attorney General Champlain was represented by William T. Odell, and Mr. Leland by Mr. Cochrane. On motion of Mr. Lester the complaint was dismissed with costs.

The action brought by William A. Dunn against Samuel H. Luther and Henry Luther, as survivors of Luther, Brother & Co., distillers, involved the validity of a verbal promise, made by a debtor set free under the United States bankrupt law of 1867, to revive a debt created before the decree in bankruptcy. The complaint alleged that on the 16th day of November, 1864, the plaintiff loaned to Luther, Brother & Co. at Ballston Spa, the sum of

\$1,300 ; taking therefor the note of Luther, Brother & Co. drawn payable to the order of Seymour Chase (the other member of the firm) and endorsed by him to plaintiff, who then became and still is the owner of the note. Chase died March 31, 1866, and Henry Luther was not served with process. Issue was joined by the defendant Samuel H. Luther, by L'Amoreaux & Dake, his attorneys, by an answered verified November 3, 1870, setting forth that defendant was bankrupt and insolvent Nov. 27, 1867, and that by a decree in bankruptcy in the United States District Court he was discharged from all debts and claims against his estate which existed Nov. 27, 1867, and that plaintiff had due notice of such proceedings. It was brought to trial at the September term, 1871, before Justice Bockes. It was assumed at the trial that the plaintiff's complaint was true, except that "as surviving partners the defendants are justly indebted to the plaintiff in the full amount of the note from November, 16, 1864." The note was introduced in evidence, and the plaintiff rested. The defendant offered a copy of his discharge in bankruptcy in evidence, and the plaintiff's attorney, Col. Odell objected on the grounds that no jurisdiction is shown in the District Court ; that it shows no jurisdiction over the plaintiff on the debt due him from the defendants ; and that the certificate is deficient in facts requisite to be shown. The court received the evidence and the defendant rested. The plaintiff then offered to prove that he

never appeared in the bankruptcy proceedings, nor proved his debt ; that Samuel H. Luther fraudulently concealed from his assignee certain real estate and property in Ballston Spa ; and, that after his discharge Samuel H. Luther, on or about September 6, 1870, promised to plaintiff to pay him the said debt. The offers were objected to by Mr. L'Amoreaux and ruled out by the court, who directed the jury to find for the defendant.

The plaintiff then carried an appeal to the General Term on the points made in a bill of exceptions stating the facts, offers, rulings and exceptions had and taken at the trial and, further, that a discharge in bankruptcy does not make the original contract void—and, that the alleged promise to pay was not a new cause of action. The defendant's points were that this court has no power to determine the validity of defendant's discharge ; that the discharge can only be attacked in the court that granted it ; that the plaintiff gave no notice of his intention to impeach the defendant's discharge ; that the plaintiff was bound to specify in an amended complaint, or by a reply his grounds of avoidance ; that if any debt existed against S. H. Luther it was by virtue of the new promise ; and, that the new cause of action should have been set forth in the complaint. The General Term sustained the judgment and a further appeal was carried to the Court of Appeals. That tribunal reversed the judgment and ordered a new trial on the ground that the evidence contained in the plaintiff's offers should have been passed

upon by a jury. A new trial was had at the January term, 1874, before Judge Joseph Potter, and a verdict was rendered for the plaintiff for \$2,167.14 and costs. About this time the Court of Appeals held, in another action, that it was not necessary to allege the new promise in the complaint, and the defendant here rested his case.

The respective responsibilities of common carriers and warehousemen and the point of difference between the two were settled by the civil action of Emily Pelton against the Rensselaer and Saratoga Railroad Company. On the 11th of March, 1870, the plaintiff removed from Battle Creek, Mich., to Greenfield in this county. On that day she consigned her goods at the former place, securely packed and marked "Emily Pelton, Saratoga Springs, N. Y." to the Michigan Central Railroad. Prior to their arrival in Saratoga, plaintiff called at the freight house and made inquiries but did not give her address. When the goods arrived, the agent made inquiries to find her and could not and her goods were placed in the store house which was burned May 1, without the defendant's fault or negligence. The suit was brought to trial before Justice Rosekrans at the January term, 1871. John W. Eighmy was plaintiff's attorney, and John B. Gale the defendant's. The court held that the defendant ceased to be a common carrier when the goods were placed in the store house and, as warehouseman, was not liable for their loss without negligence being proved. It

was taken to the Court of Appeals by Mr. Eighmy, but the opinion of Judge Rosekrans was upheld. It is reported in 54 *New York* 214.

In the summer of 1870, James Maguire, a laborer residing in Ballston Spa, lost his cow. He sought her diligently far and near. He was advised to consult a well known local clairvoyantess who told him he would find his cow on a certain farm near the head of Ballston lake, which she described. He sought her there without success. About this time, Bernard Curley, a farmer residing near Hall's corners in Malta, in coming to Ballston Spa discovered a disagreeable stench, and, after search found its source to be in a well in the pasture of Dr. James F. Doolittle in Malta, east of the Mourning kil, into which Maguire's cow had fallen and died. He had hired her pastured in that field, but Dr. Doolittle insisted that she was a trespasser there for he had found her to be unruly and had forbidden her further pasturage in his field some weeks previous to her disappearance. Maguire brought suit in justice's court to recover her value, laying his damages at \$90. On the trial he proved by several persons that if she gave the amount of milk he testified to she was worth from \$75 to \$100; but all agreed that if she was a jumper she was worth only her value for beef. The defendant proved that she could easily jump over a five board fence and was addicted to such freaks. He also sought to prove that she was trespassing on his farm at the time she fell in the well, which was just

inside the road fence. Justice Maxwell rendered a judgment for plaintiff for \$45 and costs, which was satisfactory to neither party. An appeal was taken to the County Court in which a new trial was had at the November term, 1871, before Judge Lester and a jury. Judge Scott was plaintiff's attorney, and L'Amoreaux & Dake appeared for the defendant. Since the former trial the defendant had procured a handbill which Maguire had issued at the time the cow was first missing, in which he described her as "strayed or stolen from the plaintiff's premises in the village of Ballston Spa," and he introduced it in evidence. It proved conclusively that Maguire, at that time, did not consider her at pasture in defendant's close in Malta. The jury found a verdict of "no cause of action."

The civil action brought by Mrs. Abby P. Carpenter against John B. Hodgeman and Benjamin W. Glapp is chiefly remarkable for the fact that every attorney engaged in it, with one exception, had held the office of county judge in this county. The defendants were employed by the trustees of Saratoga Springs to remove an iron fence in front of plaintiff's residence that was claimed to be an encroachment upon Broadway. The plaintiff's attorneys were A. Pond and Judge Lester. The defendants were represented by ex-Judges Corey, Hulbert and Crane. Mr. Pond was at one time a candidate for county judge, and Judge Joseph Potter, before whom it was tried at the September

term, 1872, had been a judge of Washington county. Judge William L. F. Warren was a witness for the plaintiff. Judgment was awarded to the plaintiff for \$175 and costs.

Daniel Ackart of Schaghticoke began an action in the Supreme Court, by Elihu Butts, his attorney, against Gilbert V. Lansing and John G. Lansing for damages arising from his having had his leg broken in the defendants' saw mill at Stillwater. It was brought to trial at the September term, 1872, before Justice Joseph Potter, who non-suited the plaintiff. F. J. Parmenter for the plaintiff; E. F. Bullard for defendants. It was held in the Court of Appeals that, as it was shown that plaintiff went to defendants' mill to give directions about the sawing of his lumber, the question of negligence should have been submitted to a jury. It was retried before Justice Potter in February, 1875. It was shown that Ackart stepped in front of the mill carriage and, without warning him of his danger, it was started and run against him, breaking his leg. The jury found a verdict for plaintiff for \$500 and costs. It was appealed to the Supreme Court, but the General Term, in May, 1876, following the opinion of the Court of Appeals, given in 59 *New York* 646, affirmed the verdict and refused leave to again carry it before the Court of Appeals.

Thomas P. Deyoe, a hackman, sued the trustees of Saratoga Springs for damages to himself, his carriage and team, occasioned by his driving into a ditch left open in Broadway, at the corner of Cir-

cular street, on a certain night in August, 1872. The trustees, by P. H. Cowen, their attorney, answered that the ditch was dug by the water commissioners created by a special act for the purpose of laying water pipes in the streets of Saratoga Springs, and that they, not the trustees, were the parties liable. A verdict was rendered for the plaintiff for \$500. John Foley was the plaintiff's attorney. The judgment was sustained at General Term, which held that the trustees of villages are primarily liable as highway commissioners for accidents occasioned by faulty streets. The doctrine of the liability of highway commissioners was long a disputed one in this state. Judge John Willard was strong in his objections to it. An action was brought before him thirty years ago in our Circuit Court for a similar case as that of Mr. De-yoe's. It was the action of Felix Benton against the trustees of Saratoga Springs, tried at the November term, 1846. A jury was impaneled, and as Mr. A. B. Olmstead was opening the case to them he was interrupted by the court's remark: "I shall non-suit you on those grounds." Mr. Olmstead, wholly prepared for this digression, observed: "With all due deference for your Honor's opinion, the plaintiff relies on the justice of his cause and and will carry it to the highest court, if necessary." He then argued that if he was sustained above, it would be necessary to have a verdict on the question of damages by a jury, and that as the witnesses were now in court, it would be the better way to

take the verdict now. Judge Willard deliberated a moment and then said he would let the case go to the jury, but directed the clerk to enter the fact that it was against his view of the law. A small verdict: viz. \$150, was given for the plaintiff.

The dower case brought by Elizabeth Hart against Gilman Bush, has been a long and interesting one. I. C. Ormsby, attorney for plaintiff; L. B. Pike, for defendant. The plaintiff, Elizabeth Hart, was once the wife of Dr. Stephen Hart, from whom, however, she had, during his life, obtained a decree of divorce, on account of his adultery. The decree was, of course, for an absolute divorce. Subsequently the doctor died possessed of a certain farm near Bemis Heights, in this county. This farm came into the possession of Gilman Bush, and against him Elizabeth Hart brought an action to recover her dower. The action was commenced several years ago, and has been tried at the Circuit and has once been to the General Term. At the first trial at the Circuit, in 1872, before Justice James, the defendant, Bush, offered in evidence what purported to be an agreement on the part of the plaintiff, Mrs. Hart, to accept a certain sum in lieu of a dower. It was claimed by her counsel that a divorced woman was incompetent to make a valid agreement with her divorced husband. The court sustained this view and ruled out the agreement. The defendant appealed to the General Term, where the decision of the court below was reversed, and it was held that the contract was

valid and binding. The case thus came back for a new trial before Judge Potter, without a jury. Mrs. Hart's counsel now changed his tactics. The General Term having decided that the agreement was admissible, he now denied that Mrs. Hart ever executed the agreement. It was alleged that it was executed by her daughter without her consent or approval. To sustain the agreement, the defendant called as a witness George W. Neilson, who was the magistrate before whom the agreement was acknowledged. Mr. Neilson was positive in his recollection of the execution of the agreement by Mrs. Hart. The defense also offered in evidence the handwriting of the daughter, which exhibited a difference in the manner of spelling the first name of the plaintiff as compared with that adopted by the mother. The former spelled her name Elizabeth, and the latter Elizabeth. The issues in this action are yet undecided.

The right of a father-in-law to interfere in the relations existing between his daughter and her husband and to entice her to abandon her home and seek an asylum in his house was the subject in action in the suit brought by Martin Ford against Levi Rowley. Both parties were farmers in Stillwater. Ford formed a runaway marriage with Rowley's daughter. About a year afterwards her mother induced her to leave her husband and return home. Rowley refused Ford permission to see his wife, and he brought this action to recover his rights. It was brought to trial at the January term,

1872, before Justice Bockes. L. B. Pike was plaintiff's attorney, and Pond & French for the defendant. Justice Bockes refusing to non-suit the plaintiff, the father yielded and the daughter returned to her husband. It was stipulated that the case should rest in abeyance. Rowley then sold his farm and removed to the West. Mrs. Ford about two years later went on a visit to her parents and again for a time refused to return to her husband. Mr. Pike informs me that she has, however, returned to her husband, and I trust that their marital troubles are now forever hidden from the law and public notoriety. There was no proof but that Mr. Ford was a kind husband.

In the summer of 1870, Eugenie Soumet, of New York city, deposited with Wolff Brothers, pawn brokers, a case of jewelry to secure a loan of \$88. Soon after, she came to Saratoga Springs and directed them by letter to send her the box by express "C. O. D." They placed the box as they had received it in the hands of defendant's agent in New York, with their bill. Upon delivery the agent handed to Wolffs' clerk a paper stating that defendant should not be held liable beyond \$50, unless specially insured and so specified in the agreement. At the same time he asked the value and was shown Wolffs' bill. The clerk took the receipt or contract of Wolff Brothers, who made no exception to it. The package never was delivered to M^{lle} Soumet, and she brought her suit to recover \$360.68, the alleged value of her jewelry.

It was tried in the September term, 1872, before Judge Joseph Potter. J. W. Eighmy for plaintiff, and L. B. Pike for defendant. Judge Potter refused to charge that the writing was a contract between the parties, and the jury found a verdict for the plaintiff for the amount claimed. On appeal to the General Term, in June, 1873, Judge Platt Potter pronounced the opinion of the court that by the ruling of the Commissioners of Appeals in *Belger v Dinsmore* (51 *New York* 166) there was error at Circuit. It was a question of law; not of fact. That the plaintiff was bound by the action of Wolff Brothers is settled by *Nelson v. Hudson River Railroad*, (40 *New York* 504.) A new trial was had in May, 1873, before Justice Bockes, and a verdict was found for the plaintiff for \$93 and costs.

It was decided that there is no connection of church or state in any form, in passing upon the law governing the question raised in the action brought by Anna E. Van Buren against the "Reformed Church in Ganzevoort" to recover services as organist from October, 1869, to April, 1871. It was tried in 1873 before Justice Bockes, without a jury. J. W. Eighmy for plaintiff; A. Pond for defendant. After argument on motion to dismiss complaint, Judge Bockes held, 1st, that the defendant's corporate existence must be distinctly alleged; 2d, that the existence of a church as such is not recognized by our laws; 3d, that mere assumption of a corporate capacity is not sufficient to establish a *de facto* corporation; 4th, that church music in the

country villages and hamlets being usually gratuitous, plaintiff's services will be presumed to have been such ; and 5th, to authorize recovery it must be alleged and clearly proved that there was an employment of plaintiff by the defendant as a corporate body, with a promise to pay for such services. This interesting case is reported in 62 *Barbour* 495.

On April 28, 1872, Ralph T. Darrow committed suicide at Saratoga Springs, by shooting himself. He was insured in the Excelsior Life Insurance Company for \$10,000 in the name of and for the benefit of his wife, Mary E. Darrow. The insurance company refused to pay the policy on the ground of fraudulent answers regarding deceased's habits in the application, and that it was voided by his suicide. An action was brought by John R. Putnam as attorney for Caroline E. Patrick and S. F. Terwilliger, committee of the estate of Mary E. Darrow, a lunatic. The insurance company was represented by E. F. Shepherd and E. L. Fursman. It was tried at the January term, 1874, before Judge Joseph Potter. The jury gave a verdict for the plaintiff for \$10,585.80 with five per cent allowance for costs. The verdict was appealed from and the General Term confirmed it and judgment was entered for \$11,225.20. The point decided in this case is that the policy having been taken in the name of the wife, the husband's subsequent acts will not vitiate it. The issue of fraudulent answers touching personal habits of the party insured arose, also,

in the action of Steenbergh against the Metropolitan Life Insurance Company, tried at the September term, 1875, before Justice Bockes. Putnam & Eustis were plaintiffs attorneys, and Arnoux, Rich & Woodford, of New York, appeared for the defendant. The question was decided by a jury who found a verdict for the plaintiff for \$5,000 ; the face of the policy. Concerning Mr. Putnam's management of these actions an eminent jurist writes the author in the following terms : ' I regard him as one of the best men at our bar, a sound lawyer and reliable in every place whatever. He is esteemed by the bench for his unobtrusive merit and modest and retiring, yet earnest and untiring manners.' "

The right of a postmaster to make and physically to enforce rules regulating the conduct of people while in the post office after their mail was affirmed in the action brought by John N. Whonhart against Benjamin F. Judson, tried at the May term, 1875, before Justice Langdon. Judson is postmaster at Saratoga Springs and had posted a notice in the post office forbidding smoking. He soon afterwards found Whonhart with a cigar in his mouth in the post office. He asked him to go out, or put out his cigar. Whonhart refused and Judson put him out of the building. He began an action for assault and battery in the Supreme court with P. H. Cowen for his attorney. Mr. Judson secured the services of L. B. Pike in his defense. The jury found a verdict of "no cause of action." At the

close of this term the deaths of Hon. W. L. F. Warren and Col. William T. Odell, former district attorneys of this county, were announced by Judge Lester and J. S. L'Amoreaux. Suitable resolutions were adopted and the court adjourned.

In the autumn of 1874, Mrs. Elizabeth Chipman, then lessee of the Mansion House, Saratoga Springs, began actions against nearly all of the landlords of the hotels in that village for damages alleged to have been sustained by her by reason of their turning their sewage into the creek which runs in front of the Mansion House, causing thereby a great stench so that her guests left in consequence to her great damage. The suit brought by her against John Palmer, the owner of a boarding house on Circular street, was tried at the September Circuit, 1875, before Justice Bockes. Messrs. Frisbie & Hulett were the plaintiff's attorneys. L. Varney and Judge Lester defended the hotel keepers in the person of Mr. Palmer, this being a test suit. The jury assessed Mr. Palmer's share of the damage did to Mrs. Chipman to be five dollars.

A history of the courts of this county would be incomplete without the details of a "horse suit." The late Judge Hay used to remark that it required more legal acumen to manage the details of an action wherein an equine quadruped was the "bone of contention" than it did to master the intricacies of an ejectment suit involving the settlement of conflicting patent lines. To fill the void the action brought by Mervin Adams against James D. Le

Roy, which was tried at the September Circuit, 1875, before Justice Bockes, will be cited. It also, has the merit of confirming the opinion once expressed by Ex-President Lincoln that "the one thing which the Almighty can never foreknow is the verdict of a petit jury." LeRoy is a merchant at Ballston Spa, and Adams a livery keeper at Saratoga Springs. In November, 1874, James H. LeRoy, a son of the defendant, went to plaintiff's stables and made a contract to take one of the latter's horses for its keeping during the ensuing winter, to use it as he required in his business. Young LeRoy was then past his majority. He put the horse in his father's stable, and it was occasionally used by both, the father at one time driving it to Northampton and back. About the first of January the horse became very lame and unfit for use. A tender was made of it to Mr. Adams, and he refused to accept. But, instead, he brought suit in the Supreme Court for its value alleging it to be \$300. Joseph W. Hill was his attorney. Mr. LeRoy defended the action and secured the services L'Amoreaux & Dake. Pending the action the horse was "turned to grass," and while in the pasture his forward hoofs dropped off. On the trial Adams testified that he let the young man have the horse as the agent of his father. LeRoy, senior, testified that he told his son not to get the horse, and LeRoy, junior, testified that he told Adams he wanted the horse for his own use, and corroborated his father's statement. The defendant proved by

livery men and farmers that it was an old worn out livery horse, not worth to exceed \$75. He also proved by unimpeached veterinary authority that the horse's hoof disease had been of at least two year's standing. Judge Bockes charged the jury directly upon the doctrine of bailees, that the defendant was only required to use the same care as a prudent man would of his own property, and that the preponderance of testimony was to the effect that the defendant never was a bailee of plaintiff's horse. The jury found a verdict for the plaintiff for \$175 and costs. This is the more remarkable from the fact that four of the jury went to see the horse in the pasture, and one of them, a horseman, too, said publicly that the animal had been worthless for at least two years.

At the February term, 1876, held by Justice Joseph Potter, was tried the civil action of William H. Clement against Mark M. Cohn. Clement, who lives at Morrow, Ohio, owns a block on the east side of Broadway in Saratoga Springs, occupied partly as stores and partly as dwellings. Cohn, hired a store of Clement's agent without any reservation. Clement, afterwards, claimed that there was an alley or entrance way through the cellar to tenements in the rear. Mr. Cohn asserted that he rented and occupied the cellar as a part of his store. Hence this suit. The plaintiff was represented by A. B. Olmstead, and the defendant by John Foley at the trial. Judge Potter held that a lease without reservation extends from the center

of the earth to the outer edge of gravitation, and directed a verdict for defendant and judgment was thus entered.

CHAPTER XV.

THE LANSING-RUSSEL SUIT IN EQUITY.

This suit which was commenced by a bill in the Court of Chancery and ended in the Supreme Court, in equity, forms a connecting link between the two great epochs in our judicial history, and attracted at the time great attention from the issues involved, which cast a cloud over a family widely known in the state and moving in the first circles of social, legal and political society; also, for the great number of distinguished counselors engaged in it at its various stages. It was entitled "Derick C. Lansing and others against David Russell and Alida L. Russell his wife." The plaintiff and Alida Russell were the children of Cornelius Lansing, formerly a wealthy citizen of Lansingburgh, who died April 23, 1842, aged 91 years. He had, on September 24, 1836, made a will, and annexed a codicil to it July 10, 1837. By its terms one half of the income of his property was to be equally enjoyed by his children during their lives, and after their deaths the body of his estate was to be divided among his grand children, *per stirpes*. After his death, his son-in-law, David Russell, at the time an attorney in practice at Salem, Washington county, and for six years a representative

in congress, caused to be recorded two deeds purporting to have been executed by the decedent November 30, 1841 ; one deeding his farm in Salem to David Russell, and the other his farm in Lansingburgh, his homestead, to Alida L. Russell. The signing of the deeds was witnessed by Hon. William A. Russell, son of David and Alida.

The plaintiffs filed their bill in Chancery in 1844, praying to have the deeds cancelled and set aside, charging that the signatures of Cornelius Lansing was not affixed by him to said deed, or, if done by his hand, it was by the connivance or compulsion of David Russell, or some person or persons acting under his directions. After the cause was put at issue by a replication on the part of the plaintiffs' to the defendants' answer, Chancellor Walworth awarded the following issues: "Was Cornelius Lansing legally incompetent, by reason of unsoundness of mind or mental incapacity, to execute a deed at the time the two deeds in question purport to have been executed? Were the said deeds falsely made, forged or counterfeited, or was either of them falsely made, forged or counterfeited? Were the signatures and marks purporting to be made to said deeds made by said Cornelius Lansing, or was the signature or mark to either of said deeds, procured and obtained by compulsion or by the fraudulent management had by the imposition of the said David Russell and Alida his wife, or either of them, or by any other person by the procurement of said David Russell and Alida his wife,

or one of them? It was acknowledged by both parties that at the times of the making of the will and codicil Cornelius Lansing was of a sound mind.

These issues, involving somewhat similar features to those in "Esau *versus* Jacob," recorded in Holy Writ in Genesis xxvii, were directed to be tried in the Dutchess county circuit, and were accordingly brought to trial at Poughkeepsie, November 21, 1845, before Judge Selah B. Strong. The plaintiffs' attorneys and counsel were J. E. Taylor, C. L. Tracy and David Buel of Troy, B. Davis Noxon of Syracuse, and John Van Buren of New York. The defendant David Russell appeared in person with such aid as could be furnished by those bright luminaries of the Washington county bar, Samuel and Cyrus Stevens, and, as if he knew the desperate nature of his suit, he had also secured the greatest American jury lawyer of the century, Daniel Webster, then in the proud zenith of his legal and senatorial fame. The jury found a verdict for the defendants on all the issues. This is said to have been owing to the ingenuity and tact of Webster. He possessed himself of the family history of each juror and then, *seriatim*, he addressed each one by name in the most familiar manner, and drew an illustration from their own fireside stories applicable to the issues, and asked them how they would have acted under similar circumstances.

On a case being made by the plaintiffs Chancellor Walworth made an order granting a new trial so

far as it related to Alida Russell and the Lansingburgh farm, and denying the motion so far as it related to David Russell and the Salem farm. (See 3 *Barbour Ch. Rep.* 325.) The order was dated August 10, 1847. The right of the Chancellor to make such an order at that date was affirmed by the new Court of Appeals. (See 2 *N. Y. Rep.* 563.) By the judiciary act of 1847 all causes then pending in Chancery were sent to the Supreme Court, and accordingly it was again brought to trial at the Saratoga Circuit, June 6, 1850, before Justice Hand. It continued for fourteen days. The counsel engaged in it on the part of the plaintiffs were J. E. Taylor, Job Pierson, David Buel and C. L. Tracy of Troy, John W. Thompson of Ballston Spa, B. Davis Noxon of Syracuse and John Van Buren of New York. The defendants were unable to secure the attendance of Webster at the second trial, and his place was suppld with William Hay, John K. Porter and William A. Beach, and the other attorneys at the former trial. Then began one of the closest drawn legal battles ever fought in our time-honored court house. Then Greek met Greek and the tug of war was illuminated by some of the brightest of Prince John's wit. When Hannah Brust, a witness for the plaintiff to prove the mental and physical incapacity of Lansing, was being cross-examined by Mr. Beach, she would look towards Mr. Van Buren before answering the question. He appealed to the court that the witness should answer his questions without looking to-

wards Van Buren to get the cue. Prince John coolly rose to his feet and remarked that he should "insist that the lady should be allowed her natural right to choose among gentlemen whom she should look at."

The plaintiffs proved by Dr. Samuel T. Spear, then pastor of the South Presbyterian church in Brooklyn, and now editor of the New York *Independent*, but, in 1841 a practicing physician in Lansingburgh, that at the time the deeds purported to be executed Lansing, the grantor, was suffering from a cancer on his lip that was very painful and rendered it necessary to keep him under the influence of strong narcotics, and that the cancer eventually caused his death less than five months afterwards. They proved by Jane Giles, Hannah Brust and William Lansing that it would have been impossible for Lansing to have signed the deeds without one of them knowing it, that he was partly deaf and nearly blind, that his food had to be cut for him, and that he had to be dressed and led about his apartments. Other evidence was given to show that the deeds were in the hand writing of David Russell, excepting the signatures, which appeared to show a quaver as of an unsteady hand, but under a microscope these irregularities indicated the steady nerves of the hand that executed them, for they were in graceful curves; that Alida Russell after the death of her father had said that she wished that she could buy the old homestead but was too poor to do so; that the mental and phy-

sical capacity of the grantor was such that five years before he had turned over to another son-in-law, Elisha Alvord, (father of Hon. Thomas G. Alvord of Syracuse) all his notes, bonds, deeds, leases, etc.; and that the fact of the execution of the deed to Alida Russell was not known till after his death, and until a partition suit made its production necessary, if she insisted on holding under it.

The defense interposed evidence to substantiate that the grantor was in sound mind at the date of the signature of the deed; and also of the finding of the previous verdict sustaining its validity. Solomon W. Russell, another son of David, was not sworn at this trial, his testimony, as to the declarations of his grandfather acknowledging publicly the execution of the deed to David Russell, being unnecessary under the Chancellor's ruling affirming the validity of that deed, there being reasonable ground to so adjudge it. The case was summed up for the defense by Samuel Stevens, and for the plaintiff by John Van Buren. Judge Hand then charged the jury to find upon the interrogatories framed by the Court of Chancery, (before given) and they in their verdict answered the first and second, in the negative, and the third in the affirmative. Judgment was thereupon entered for the plaintiffs cancelling the deed of the Lansingburgh farm to Alida Russell.

An appeal was taken to the General Term, and a motion to grant a new trial was heard at Malone in July, 1852, by Justices Willard, Hand and Cady;

Justice C. L. Allen, being a relative of the parties, taking no part. An exhaustive opinion of the Court affirming the verdict was read by Justice Willard. The following synopsis is prepared from the reported decision in 13 *Barbour* 510: "The verdict of the jury in the first instance having been in favor of the defense, on all the issues, and the late court of chancery having affirmed it as to the deed to David Russell, this court cannot entertain at this date a motion to set it aside. Neither can the motion of the defendants to have both deeds declared valid be entertained. The important question before the court is whether there is sufficient grounds disclosed in the case to call for interference with the verdict for the plaintiffs on the last issues. The parties standing in the same relation to the testator, and the defendants claiming under a deed made after the execution of a will, the presumption is against anything which alters the nature of that will. It is not denied that when the will was made the testator was of a sound mind. The deed to Mrs. Russell totally disarranges the will, and is, therefore, of the nature of a codicil. It purports to be a gratuity, to place her on an equality with his other children. The deed is in the handwriting of David Russell and is witnessed *only* by William A. Russell. Conceding that Mr. Lansing had capacity to make the deed, still he was in a condition when even 'the grasshopper is a burden.' His acts done when he could have been so easily controlled should be watched with jealousy. It is not

necessary to impute forgery or perjury to William A. Russell. He may not have been present when the grantor was induced to assent by undue influence. This conveyance is of a testamentary nature and, as such, having but one subscribing witness, is void. It is unusual in form, and disturbed the harmony of the will. It was never alluded to in any subsequent conversation by the testator, nor acknowledged by him. It is attended with all the circumstances of doubt and suspicion. If it was genuine it should have been mentioned at the time the will was read." The motion for a new trial was denied and a decree was then entered setting aside the deed of the Lansingburgh property, neither party being allowed costs against the other on the motion. The matter there rested, and save for the principles it settled and the magnitude of their proportions it has well nigh been forgotten by all except the legal fraternity.

CHAPTER XVI.

THREE SINGULAR LAND SUITS.

This work would not be complete without giving a brief detail of the celebrated land suits of Seabury against Howland; Holmes against Smith; and Wood against LaFayette. The first was brought by Nathaniel Seabury, Daniel Swartfiguer and others, heirs of Sarah Broughton Seabury, who was a direct descendant from Samson S. Broughton, one of the patentees of the Kayaderosseras grant. The suit was brought by Duncan McMartin, attorney, with the aid of his father-in-law, Daniel Cady, as counsel, against Elisha Howland who held about 600 acres in Halfmoon by virtue of a title derived from the husband of Mrs. Seabury. It was commenced in August, 1846. Suits were also brought against Truman Mabbett of Halfmoon, George W. Wilcox of Saratoga Springs and others in the north part of the county to recover lands held by similar titles. Howland employed E. F. Bullard, Mabbett secured John K. Porter, and Judge Warren and Judiah Ellsworth were retained by the other defendants. Although these lands had been held over fifty years under these titles, Judge Cady, who had thoroughly examined them, was certain that adverse possession did not sustain them because

the statute was suspended by the infancy and coverture of the claimants. They were noticed for trial at the several intervening terms, and at the May Circuit, 1847, Mr. Cady appeared ready for trial. It had been determined to make a test suit of the action against Howland. Judge Cady said to Mr. Bullard: "You and I can just as well try this case in my room. If I am right, I am sure you will acknowledge it; but, if I am wrong, I don't want to be beaten in open court, for this is the last cause that I shall try as counsel." The aged counselor of 75 years and the youthful lawyer accordingly met in the former's room at Medbery's hotel in Ballston Spa, May 25, 1847, to mutually examine the respective claims and titles of their clients. Cady began with the Kayaderosseras grant and its divisions, tracing down the title by descent unbroken to the plaintiffs. Mr. Bullard conceded that this was a *prima facie* case, and then disclosed his evidence, beginning with a deed from Seabury to Edward Howland, father of the defendant. Cady replied: "Seabury had only a life estate and the coverture and infancy of the plaintiffs prevents this title from becoming adverse." Mr. Bullard admitted that it so appeared on the face, but the two deeds that he now produced, which he had found recorded in Albany county, altered the phase entirely. One was from Sarah Broughton Seabury and her husband to a third party with power to sell and convey as a trustee, and the other was a deed from the trustee convey-

ing all the real estate back to Seabury; the husband. This settled the claim to over \$100,000 worth of real estate. The great lawyer saw at once that he had no further hope, and said: "I give up. Your title is clear and cuts off our whole claim. Go and tell Judge Willard to enter a non-suit. I am going to Johnstown." The court records in the clerk's office shows that a non-suit was entered in this action May 25, 1847. It was the last cause tried by Daniel Cady, for he was elected a justice of the Supreme Court the following month, being the only whig candidate chosen in the district. He continued to hold that office until December 31, 1854, when he resigned. He died, retaining his faculties to the last, in October, 1859, in the eighty-seventh year of his age. He was one of the purest and greatest men who have adorned the bench of this state.

The suit brought by Allen J. Holmes against Lewis Smith, and the counter suits brought by Lewis and Silas G. Smith against Holmes involved a valuable interest relating to the title and possession of about 600 acres of land in Stillwater and Malta. In the spring of 1853, Allen J. Holmes of Pleasant Valley, Dutchess county, bargained with Lewis Smith of Stillwater to purchase his farm containing five hundred and forty-seven acres, three roods and three rods of land, lying in three tracts, with some reservation of lands previously sold from the original boundaries. The farm had been worked the previous year by Silas G. Smith, son of Lewis,

and he owned several acres of rye then growing on the farm. By some oversight the reservation of this grain was omitted from the articles of agreement. Smith had always been noted for making shrewd bargains, and Holmes boasted to some of his friends that the "old fox had been caught at last." This reached the ears of Smith. He looked at the copy of the agreement. It was a fact, he had been napping, but still was not caught. He hastened to James B. McKean, his attorney. He could see no other way out than to pay the heavy forfeiture. Other distinguished counselors said the same. Smith finally in his own mind evolved the following solution: they were to meet at the county clerk's office on the 10th of May to deliver the deed, and accept the mortgage that was to be taken by Smith as part payment of the consideration to be paid for the farm; and he decided to have two deeds drawn, one with a clause "reserving grain sowed on the land and the right to cut and remove the same," and the other a simple warranty deed according to the contract. If Holmes should demur to the former, he would demand the payment of the full consideration: viz, \$29,905.56 *in specie*, well knowing that the amount could not be obtained within the specified time at the bank in Ballston Spa. The day came, Holmes and his attorney, Abel Meeker, were early on hand and in a jubilant mood. Smith and his attorney, James B. McKean, did not appear until afternoon. Smith tendered the first deed, and Holmes declined to

receive it, for it was not "so nominated in the bond." Smith then tendered the other deed and said he would take his pay in the "legal tender." This was a bombshell in the Holmes camp. Meeker saw that they were trapped and advised his client to accept the former deed. Rather than pay the forfeiture he did so.

But though vanquished he was not yet beaten. He secured Nathaniel J. Seeley, a surveyor, of Ballston Spa, to survey the farm, and he in running the courses as mentioned in the deed found that there was not so many acres as that instrument called for. Holmes then began an action for damages, alleging a breach of covenant. When the first payment came due on the mortgage he refused to honor it, and Smith began a suit on the bond. Holmes demurred, and in this stage it went to the Court of Appeals, where the demurrer was sustained. The first action was referred to Cornelius A. Waldron to hear and determine. Smith had the farm surveyed by Norman Seymour, a civil engineer residing in Stillwater. Having the assistance of parties who knew the 'ancient landmarks' his survey tallied with the deed as nearly as a survey of a farm composed of several different purchases of land could be expected to, when it is taken into consideration that hardly one of them was one of the original lot lines and that the tract had as many angles as the palace of the Escorial. The referee found for defendant. His report was set aside by the Supreme Court on the ground that Seymour's

chain was sworn by him to be graduated according to the *United States* scale, and the court, in a virtuous states' rights mood, declared that it should be according to the *New York* scale. It is a singular fact that the units are of the same length by both standards. A new survey was ordered and Delos E. Culver, a quite prominent civil engineer, was designated to conduct it. Silas G. Smith, also, began an action against Holmes for damage to his grain by the latter's cattle and recovered judgment, which was appealed to the higher courts. While these three suits thus "hung fire," in the winter of 1860, Mr. Holmes was suddenly taken ill and died. The actions were finally settled by the Smiths and the executors of Holmes, and thus they withdrew from the courts. Gen. Bullard was associated with Judge McKean as counsel for Smith. James W. Culver assisted Mr. Meeker as counsel for Holmes.

The third case is that of Hiram Wood against Michael de LaFayette. The défendant is a French Canadian who, in 1858, purchased a forty acre lot in the town of Milton, which had formerly been owned by James Mann, the elder. He claimed that the north line of the lot was not as it existed at the time of his purchase, but as it did when it was occupied by Mann. Accordingly he removed his fence from the position in which it had stood over forty years to the line which was named in Mann's deed, the distance of twenty four links, and cut the timber then growing on the land. This narrow belt

of sandy land, not worth twenty dollars and less than two-thirds of an acre in extent, has been the source of a litigation which bids fair to outlive its prominent actors. Wood sued in justice's court, declaring in trespass for cutting trees upon lands in his possession. J. S. L'Amoreaux was his attorney. The defendant, by Joseph LeBœuf, his attorney, denied all the allegations and set up a claim of title in himself to the premises. The action was thus removed to the Supreme Court, where John Brotherson appeared as defendant's attorney and the issue was joined. The plaintiff declared upon his deeds and the fact of his possession of the premises and that the defendant had never been lawfully seized of them. The defendant stood upon the boundaries of the deed to James Mann, from whom his title emanated, in 1815. The action was tried at the Saratoga Circuit in May, 1868, before Judge James. The defendant's offer to prove the ancient boundary was ruled out and excluded, and a judgment was entered against him for \$50. He appealed to the General Term and the judgment was affirmed. He further appealed to the Court of Appeals and a new trial was ordered. (See 46 *N. Y. Rep.* 484.) The second trial was had at the January Circuit, 1874, before Justice Joseph Potter. He allowed the defendant to prove that an agreement to submit the line in question to the arbitration of James Mann, the younger (since deceased), for him to determine as to its correct latitude had been revoked by the plaintiff, but excluded the deeds and docu-

mentary evidence offered by the defendant; charging the jury that "the title to the lands between the plaintiff and defendant shall be determined, not by reference to the deeds, nor by reference to any other fact than this, that one of them is to own to the extent that James Mann occupied." It was shown in proof that Mann had only occupied the cleared land and that LaFayette had purchased the land as the line fences then stood. The jury again found a verdict for the plaintiff for \$50. Judgment was thereupon entered for \$679.47 damages and costs. The General Term has again affirmed the verdict, and a motion for a new trial is now pending in the Court of Appeals. L'Amoreaux & Dake and L. B. Pike have zealously guarded the claims of the plaintiff, and John Brotherson has been equally strenuous in defending the asserted rights of the defendant. When or how it will end the soothsayers prophesy not.

CHAPTER XVII.

SARATOGA'S CIRCUIT JUDGES.

Reuben Hyde Walworth, the "Last of the Chancellors," was a son of Benjamin Walworth of Bozrah, Connecticut, in which town he was born October 26, 1788. During his early boyhood his father removed to the town of Hoosick in this state, where he lived the life of an honest and respected tiller of the soil. The educational advantages offered to young Walworth were very meager. He graphically describes them in his address to the bar on taking his seat as Chancellor, April 28, 1828 :

GENTLEMEN OF THE BAR: In assuming the duties of this highly responsible station, which at some future day would have been the highest object of my ambition, permit me to say, that the solicitations of my too partial friends, rather than my own inclination, or my own judgment, have inclined me to consent to occupy it at this time. Brought up a farmer's boy until the age of seventeen, deprived of all the advantages of a classical education, and with a very limited knowledge of chancery law, I find myself, at the age of 38, suddenly and unexpectedly placed at the head of the judiciary of the state; a situation which heretofore has been filled by the most able and experienced members of the profession. Under these circumstances, and when those able and intelligent judges, who for the last five years have done honor to the bench of the Supreme Court, all decline the arduous and responsible duties of this station, it would be an excess of vanity in me, or in any one in my situation, to suppose he could discharge those duties to the satisfaction even of the most indulgent friends. But

the uniform kindness and civility with which I have been treated by every member of the profession, and, in fact, by all classes of citizens, while I occupied a seat on the bench of the Circuit Court, afford the strongest assurance that your best wishes for my success will follow me here. And, in return, I can only assure you, that I will spare no exertions in endeavoring to deserve the approbation of an enlightened bar, and an intelligent community" (See: *Paige's Chancery Reports*.)

The Walworth family is an ancient one in Connecticut, tracing its origin to the historic Walworth, lord mayor of London, who slew the rebel Watt Tyler, in the reign of Richard II. Becoming unfitted for a farmer's life by an accident, the future Chancellor studied law and was admitted to the bar soon after attaining his majority. In 1314, he served as an aid on the staff of Major General Mooers, and took an important part in the battle of Plattsburgh. After the war he again entered on practice of his profession at Plattsburg, where he had settled in 1810. He was appointed Circuit Judge for the fourth circuit, April 21, 1823, by Governor Joseph C. Yates, with the consent of the senate. He held the office for five years. He was noted for his prompt and fearless administration of the laws in the civil and criminal branches of his courts. In this and other counties he was frequently called on to adjudicate claims to lands in the patents granted under the seal and sign manual of Lord Cornbury. Soon after his appointment he removed to Saratoga Springs, where he resided until his death, with the exception of the interval from 1828 to 1833, when he had a residence in

Albany. "Pine Grove," his Saratoga seat, became in the legal "Mecca" of the bar of this state. Drawn thither by business in his court came Govs. Tompkins, DeWitt Clinton, Yates, Van Buren, Marcy, Throop, Wright, Seward and Tilden; Presidents Buchanan and Fillmore; Charles O'Connor, B. F. Butler, the three Spencers, Elisha Williams, Samuel Stevens, Thomas Addis Emmett and Daniel Webster, and there he entertained his brethren of the bench, Kent and Story and Grier; besides hosts of men and women widely known in the clerical, military and civil professions and in the literary walks of life. Perhaps the most widely remembered case tried before him as a criminal judge was the indictment against the three brothers, Nelson Thayer, Isaac Thayer and Israel Thayer, jr., charging them with the murder of John Love, at the town of Boston, Erie county, December 24, 1824. Their object was to secure the money of Love, who was an inoffensive, harmless bachelor, who made his home in the family of Nelson. They were engaged in killing pork at the barn of Israel Thayer, jr., and they "mingled his blood with that of their butchered swine." Possessing themselves of the few hundreds of dollars he was known to have on his person, they buried his body under the rubbish of a lately cleared forest. The passing of a certain bill, known to have been in the possession of Love, by Israel Thayer, jr., and the fact of his disappearance led to the arrest of Israel Thayer, senior, and his three sons. Confronted with the

facts obtained, the father confessed the crime, and the body was found where he indicated. They were indicted on his confession, and, at the Oyer and Terminer held in Buffalo in April, 1825, the three sons were convicted of willful murder, and the father of being an accessory both before and after the fact. The sons were executed at Buffalo, June 17, 1825; and the wretched father was sentenced to states prison for ten years and ended his life in a cell. The language of Judge Walworth in passing the "dreadful sentence of the law," which consigned to the gallows "three young men who have just arrived at manhood, standing in the relation to each other of brothers" was touching in the extreme; awakening in his heart, as he said, "feelings which are too painful to be expressed." The office of Chancellor having become vacant, the position was tendered Judge Walworth by Gov. Pitcher. He reluctantly accepted it and the appointment was confirmed by the senate April 22, 1828. His predecessors in the Equity Chamber were Robert R. Livingston, John Lansing, jr., James Kent, Nathan Sanford and Samuel Jones. He at once entered upon his new duties and ably sustained the reputation of the court which had been presided over by such brilliant men as had gone before him. He held the office until it was abolished by the constitution of 1846. The record of the court and its veritable parchment roll of attorneys are now filed in the state library at Albany. He had strict notions of honesty and

integrity, and the Chancellor's court being circumscribed by no rules of law, he often astonished solicitors who appeared before him by the quick manner in which he saw through their legal quibbles and subterfuges and brushing them away like cobwebs applied the strict dictates of equity to their cases. The only office he ever held outside of the state was representative in congress from Clinton county from 1821 to 1823. In 1844, he was nominated to a seat on the bench of the Supreme Court of the United States by President Tyler, but was rejected by the senate ; southern senators deeming him unsound on the "peculiar institution." He was the Democratic candidate in 1848 for governor. The Van Buren split in the party was the cause of his defeat, and his whig opponent, Hamilton Fish, was elected by a plurality vote. The other candidate was Gov. John A. Dix. Chancellor Walworth was twice married. His first wife was Miss Maria K. Averill of Plattsburgh. Subsequent to her death, he was united to the widow of Col. John J. Hardin of Illinois, who gallantly fell at the head of his regiment at Buena Vista. She survived him eight years. In his latter years he was appointed a referee by the United States Circuit Court to take the evidence in the celebrated Corning and Burden "hook spike head case ;" in which Burden, the great Trojan iron king, claimed that Corning, his Albany rival, had infringed on his patents. It occupied in its trial over ten years, and he filed his report but a few months previous

to his death. He was a sufferer from diabetes for a long time, and finally he was relieved from his earthly pain, November 28, 1866, and the "Last of the Chancellors" was laid to sleep in the beautiful Greenridge cemetery at Saratoga Springs. He was for many years a prominent member of the First Presbyterian church in that village. He was a great advocate and worker in the cause of total abstinence, and was chosen first president of the New York State Temperance Society in February, 1829, and subsequently president of the American Temperance Union.

Esek Cowen was born in Rhode Island, February 24, 1784. He was the son of Joseph Cowen, who was a descendant from a Scotch emigrant who settled in Scituate, Mass., in 1656. His father removed to this county in the colony from Connecticut which embraced, among others of the pioneers of Greenfield, the Fitch and Child families, about 1793. The elder Cowen settled near Scott's corners. A few years later he removed to the town of Hartford, Washington county, and purchased a farm on which young Cowen labored in his early years. His son, P. H. Cowen, Esq., informs me that his father has repeatedly told him that the only educational advantages he ever enjoyed was six months attendance in a neighborhood school. He had been gifted by Nature with a most retentive memory and he gathered much useful knowledge from the studies of his younger brother, Solomon, who read aloud to him from his text books. It would be

hard to determine which gained the most advantage, the reader or the hearer ; at any rate the latter became a most patient and careful listener, a quality eminently necessary in a judge. He, also, while engaged in tending the fires of his father's lime kilns, kept his book by his side, and while disengaging the free carbonate from its ancient chemical bonds, was storing his mind with the classic and scientific lore of ancient and modern times. Here he gained that quality of observation which enabled him in later years, as has been said of him, to pursue two chains of thoughts at the same time, to carefully listen to the argument of an advocates closely compare it with the points made by the opposing counselor and be ready at the moment of conclusion with a decision touching concisely upon all its bearings. He became a thorough master of classical and English literature. He early turned his attention to the law and entered the office of Roger Skinner at Sandy Hill. His fellow students were Silas Wright, jr., Zebulon R. Shipherd and Gardner Stow, all men who left the impress of their lives on the age in which they lived. He was admitted to the Supreme Court bar in 1810. Forming a law partnership with Wessell Gansevoort, they opened an office and began the practice of the law at Ganzevoort ; from whence he removed to Saratoga Springs in 1812. He soon took a front rank at the bar of this county. He married in 1812, Mrs. Elizabeth Rogers, the widowed daughter of Col. Sidney Berry of Saratoga, a brave revolution-

ary officer, who was a judge of this county and its first surrogate, holding the office from 1791 to 1794, and was a member of assembly from Albany county in 1791, the year our county was erected, and was also chosen the next year with Elias Palmer to be the first assemblymen from Saratoga county. Mr. Cowen was appointed "Reporter in the Supreme Court and Court of Errors" in May, 1824, and held the position until August, 1828. His reports are contained in nine volumes and are highly prized by the profession. He was appointed Circuit Judge by Gov. Pitcher, April 22, 1828, and on the appointment of Judge Samuel Nelson to be Chief Justice, on the retirement of John Savage, he was appointed a *puisne* judge of the Supreme Court of this state by Gov. Marcy, August 31, 1836; which position he held until his death. Judge Cowen presided with firmness and dignity while on the bench, and was very exacting of the bar in the economy of time. On the occasion of his holding his first Circuit Court in Troy he took his seat on the bench at the appointed hour. Not an attorney was present. Under a lax discipline they had been in the habit of not appearing in the court room before eleven o'clock. He called the calendar and no causes being ready, he ordered the clerk, Archibald Bull, to adjourn the court until the next morning at nine o'clock, adding the remark, that if nothing was ready for trial at that hour he would adjourn the term *sine die*. The bar took the hint, and the untiring judge worked them until ten in the evening

each day of the term. On another occasion he drove to Elizabethtown, Essex county, in a heavy snow storm to attend an adjourned term. Arriving at the court house he found it unopened and no one in sight at the appointed hour. He got out of his sleigh, leaving his son, my informant, holding the reins, went upon the steps, adjourned the term without day and started for Plattsburgh, before the dilatory court officers and bar knew of his presence. As a criminal judge he was strenuous in defending the liberties of citizens, holding prosecuting attorneys to prove the guilt of a prisoner beyond the peradventure of a doubt before asking a jury to convict him. While sitting on the supreme bench he assisted in deciding many knotty legal points, and his opinions are yet frequently quoted in this and other states. A gentleman, who has attended the sessions of the Queen's Bench in England, informs me that Cowen is frequently quoted by the English sergeants and barristers. His most celebrated opinion was that involving a question of international law. McLeod, a Canada patriot, in the rebellion of 1837, had been arrested for waging war against a nation with whom our country was at peace. His case was brought before the Supreme Court on a *habeas corpus*, but it refused to discharge him. "The court," says a learned authority of that day, "in refusing to discharge McLeod, have nobly maintained the supremacy of the laws, and vindicated the dignity and rights of this state." The opinion was written by Judge Cowen and was

coincided in by Chief Justice Nelson and Judge Bronson, his associates on the bench. He carefully distinguished between the jurist and the citizen. At the same time he, as a judge, was condemning McLeod for his connection with the rebellion, by going from this state to war upon Great Britain; he, as a citizen, was entertaining Papineau, Bidwell, O'Callaghan and others of that ill-fated band, at his residence in Saratoga Springs. He died in Albany after a brief illness, during a session of the court, February 11, 1844, having nearly completed the age of fifty seven years. Judge Cowen was a devoted member of the Episcopal communion, and was one of the founders of Bethesda parish Saratoga Springs. He was buried in the Putnam burying ground, but his remains have since been removed to a family plot in Greenridge cemetery. In his early life he held the office of justice of the peace, and, in 1821, he was elected second supervisor of Saratoga Springs, and was re-elected in 1822. Besides his "Reports," he has bequeathed to the profession as the work of his pen a "Treatise on the Practice in Justices' Courts," suggested by the want of such a work when he held that position, which has frequently formed for years the only library of country practitioners in those humble tribunals; and "Notes on Phillips' Evidence," prepared in connection with Nicholas Hill, jr. Previous to his elevation to the bench he had entered into the law partnerships with Judge Warren and Judiah Ellsworth. The latter now is almost the

sole survivor of those who had the good fortune to be intimately acquainted with Judge Cowen.

John Willard was a prominent member for many years of our state judiciary. He was born in Guilford, Connecticut, May 20, 1792. His paternal ancestry dates back to the settlement of that town in 1659, and came from the Puritan stock which came over with John Winthrop and settled at Massachusetts bay. He was educated at Middlebury College, Middlebury, Vermont, and was graduated therefrom in August, 1813, in the same class with Silas Wright, jr., and Samuel Nelson. He studied law and was admitted to practice in 1817. He established himself at Salem, Washington county, where he soon gained the reputation of being a model lawyer. He was appointed first judge of Washington county by Gov. Marcy, February 13, 1833, to succeed Hon. Roswell Weston; having held the office of surrogate by appointment the previous year. He was appointed Circuit Judge, September 3, 1836, to succeed Judge Cowen, transferred to the bench of the Supreme Court. He held this office until 1847, when it was abolished. The same year he was elected by the people to the new office of Justice of the Supreme Court for the fourth district, along with Daniel Cady, Alonzo C. Paige and Augustus C. Hand. He drew the term for six years, next to the longest, which fell to Justice Hand. He served his term, and on its expiration retired from the bench; Hon. A. B. James having been elected to succeed him. As a judge

he was noted for his quick perceptions and firmness in ruling as he conceived to be right. His career as a jurist was such as to win for him the universal esteem of the bar of the state. On his appointment to the office of Circuit Judge, he removed to Saratoga Springs, to be convenient of access by railroad to the counselors who had business before him as Vice Chancellor. In 1856, he was appointed by President Pierce, on the advice of his attorney-general, Hon. Caleb Cushing, one of the commissioners to examine into the validity of the Mexican land grants in California. He performed this arduous duty in a most thorough and satisfactory manner, and the United States Supreme Court was guided by his findings in their decisions of the "Mariposa," "New Almaden" and other claims. In 1861, he was unanimously elected to the state senate and served in the first session. His labors there were to sustain the national government in its contest with traitors; and he, also, did much to correct the faults he had seen as a judge to exist in the laws concerning the crime of murder, and the rights of married women to control their separate estates. Before the next session met he had been called up higher; having closed his busy and eventful life, August 31, 1862. As a lawyer and a judge he believed in a strict administration of the criminal laws, rightly judging that the lawyer who prostituted his talents to defend by "quirks and quibbles" a notorious offender was

directly responsible for the rapid increase of crime. In his writings he says :

In the beginning, as a poor young lawyer getting business slowly I had strong temptations. I was sometimes assigned by courts to defend bad men, but then my only duty was to set forth any extenuating circumstances. Scoundrels who deserved punishment soon learned to keep clear of me. As for such poor fellows, however, as had been thoughtlessly led into crime, I would frequently give them advice, gratis, after telling them to repent and reform."

How strikingly does this compare with the conduct of David Dudley Field in defending the notorious Tweed and the "Ring thieves" of New York ; and with other instances which might be mentioned, which reflect no honor on the advocates, and which have exerted a baneful influence on the rising generation. Upon leaving the bench, Judge Willard began the preparations of important works which alone would commend him to the admiration of the profession. His treatises on "Equity Jurisprudence," "Executors, Administrators and Guardians," and "Real Estate and Conveyancing," says his friend, Hon. O. L. Barbour, himself a distinguished legal author: "Are the results of an unwearied industry, and the fruits of a long and ripe experience. They will ever be regarded as a valuable legacy left to his brethren, by one who loved his profession and was proud to pay the debt he owed it." Much of his success in life he attributed to the judicious advice of his aunt, Mrs. Emma Willard, the distinguished educator, in whose family he had a home in his college days.

He had the misfortune to lose his daughter, an only child, in 1853. His wife, to whom he was united in 1829, died in 1859. Her maiden name was Miss Emma Smith. They were for many years members of the First Presbyterian church in Saratoga Springs. They, also, are interred in Greenridge cemetery.

Augustus Bockes, though by his title he is a Justice of the Supreme Court, has ably and honorably performed the functions of a judge at Circuit for nearly a score of years. He was born near Greenfield Center, October 1, 1817. His father, Adam Bockes, jr., was a farmer and was held in high esteem by his townsmen. He was supervisor of the town in 1834. He brought his son up in the ordinary routine of a farmer's boy life, giving him the advantages of the district school to obtain an education. Arriving at the age of eighteen years, young Bockes took and taught a school, and for three successive winters was "lord of the birch and ferule" in the days when "boarding around" was the common lot of the school teacher. The two intervening summers he passed in study at the Burr Seminary, at Manchester, Vermont. He then began his legal studies in the office of Judiah Ellsworth in the spring of 1838, and a year later entered the office of Beach & Cowen. The latter being Sidney J. Cowen, whose death at sea has been previously related. He was admitted to practice in 1842. He opened an office in connection with Stephen P. Nash. Afterwards, he formed a law

partnership with William A. Beach, which continued until 1847, when he was chosen to be the first county judge, at the special judicial election held June 4, 1847, at which he was the whig candidate for that office. The democrats nominated the veteran lawyer, George W. Kirtland of Waterford. The contest resulted in the election of Mr. Bockes by a handsome majority. Such was the beginning of what has proved a brilliant judicial career. The honor thus conferred on her son has been reflected on the county which gave him birth. In November, 1851, he was re-elected by a majority of 1,205 over Edward F. Bullard. Justice Cady having resigned his seat on the bench, Governor Clark, January 1, 1855, appointed Judge Bockes to the vacant justiceship. He served under that appointment until the expiration of his term the ensuing December. His appearance at the Circuits held by him and the record that he made was such as to commend him to the bar and public generally, and he was urged to place himself before the people for an election to that high office. He declined, and returned to the practice of his profession, and Enoch Rosekrans was chosen to succeed him. Four years later, on the expiration of the term of Justice Cornelius L. Allen, he accepted a nomination from the Republican party and was elected over that popular judge. In 1867, he was again placed in nomination and, the democrats making no nomination, was elected without opposition. This was a high honor to an upright judge.

In 1873, Gov. Dix designated him to be one of the justices to sit at General Term for the third department. In 1866, he had a seat on the bench of the Court of Appeals, in due course under the provisions of the constitution, as it was previous to the amendment of 1869. In 1875, it was generally understood that he would not make a canvass to secure a re-election, but would hold himself at the will of the people as expressed in the party conventions and at the ballot box. The result proved his judicial and personal popularity, for he received a compliment that has never been given to any other citizen of the state—he was nominated by both parties unanimously and elected by a full vote of the people of this judicial district. A higher mark of confidence cannot be paid to a citizen of our republic. Gov. Tilden showed his appreciation of his worth by again designating him as a justice to sit at General Term. Judge Bockes is noted for his courtly manners and the dignity and urbanity with which he presides on the bench. Quick to comprehend a point about to be made by an advocate, he often anticipates him by a decision of that question. His opinions as given on the bench at the County Courts, Circuits, and General Terms have rarely been overruled when carried to the court of last resort. His friends have hopes of his yet attaining a seat on the bench of the Court of Appeals, for which position he is rarely fitted by his habits of close reasoning and logical application. Judge Bockes was united quite early in life

to Miss Mary Hay, daughter of Hon. William Hay of Saratoga Springs. He is a communicant of the Episcopal church and is, at present writing, one of the vestrymen of Bethesda parish, Saratoga Springs.

Such are Saratoga's Circuit Judges. Well may her bar be proud of their honored record and point to Walworth, Cowen, Willard and Bockes as judges "*semper paratus, semper fidelis*"—"ever ready" to do their whole duty, and "ever faithful" to the important trusts confided to their hands. May their example be emulated and their virtues copied by those who are yet to sit on the bench they have dignified with their presence and labors.

CHAPTER XVIII.

THE FIRST JUDGES OF COMMON PLEAS.

First Judge John Thompson was born in Litchfield, Conn., March 20, 1749. But little of his early history is known to the present generation, beyond the fact that he was descended from the Scotch-Irish colony, which settled at Londonderry, N. H., in the seventeenth century, and was one of the Litchfield colony which emigrated to this state in 1763, and settled in the town of Stillwater. The farm on which Thompson's father settled was at the foot of Potash Hill about a mile and a half southwest of Stillwater village, being that now owned by Robert K. Landon. The Litchfield colony was a Congregational society or church in that town which was formed in 1752. In the year 1763, under the lead of their pastor, Rev. Robert Campbell, they resolved to emigrate in a body to the *terra incognita* of the Saratoga patent, on which they settled under the patronage of Gen. Philip Schuyler. The colony embraced beside the Thompson family, among others the Seymours, Fellows, Palmers, Ensigns and Burlingames, whose descendants yet live in Stillwater. They founded the religious society in that town which from its ancient edifice acquired the name of the "Yellow Meeting House," and

which is now the oldest religious society in the county. This colony was eight years anterior to that led by Rev. Eliphalet Ball, under similar circumstances, to Ballston Center. Mr. Thompson was married at an early age, and was an ardent patriot during the Revolution, enjoying the esteem and friendship of Gen. Schuyler. He was appointed one of the first justices of the town of Stillwater, on its erection March 7, 1788. He was not bred to the law, but pursued an agricultural life on the acres he inherited from his father. On the erection of the county of Saratoga in 1791, he was appointed to the responsible office of First Judge by Gov. Clinton, on the recommendation of Gen. Schuyler. His commission dates from February 17, the day the bill was passed by the legislature and promptly approved by the governor. While he sat on the bench he made a fearless and upright judge, the minutes of the clerk bearing impress frequently of his quick and apt rulings, showing that though not learned as a clerk in the law he was a deep student of the practice and theories of the courts. He was elected a member of the national house of representatives in 1798, and served in the three sessions of the fifth congress, under the administration of the elder Adams, in which he strenuously opposed the Alien and Sedition laws. In 1801, he was elected and served as a member of the convention called to revise the state constitution. He was again elected to the house of representatives in 1806 and re-elected in 1808, serving in

the tenth and eleventh congresses during the last two years of President Jefferson's, and the first two years of President Madison's administration. During this period, on March 20, 1819, he reached the constitutional period: viz., sixty years, when he was called on to lay aside his judicial robes, and Hon. Salmon Child was appointed to succeed him. On the 3d of March, 1812, his last term in congress expired, and he returned to private life at his home in Stillwater. During his latter years he was afflicted with palsy, which finally terminated his earthly existence in November, 1823, in the seventy-fifth year of his age. One of his sons was the late Judge Thompson of Milton, the other Dr. Nathan Thompson of Galway. One of his daughters married Dr. Aaron Gregory of Milton, and the second, Dr. Isaac Sears of Stillwater.

First Judge Salmon Child was, also, a native of Connecticut, in which colony he was born in the year 1762. His father was a captain in the Connecticut line and Salmon joined Washington's army in the spring of 1781, and participated in the march to Virginia, and in the final triumph at Yorktown. In 1832, he became entitled to a pension by the act of congress, hitherto referred to in these pages. [Perhaps no non-professional man ever received a greater proportion of offices in this county. He was a plain farmer, a sound common sense man, and ever sustained an irreproachable moral and religious character, the great weight of which brought him into public life. With his

father he was one of the pioneer settlers of Greenfield soon after the Revolution, locating in the south part of the town. He was appointed one of the first justices of the peace in the town of Greenfield. He was twice elected to the state assembly and sat in the legislatures of 1808 and 1809. In March, 1809, on the retirement of Judge John Thompson, he was appointed to the responsible office of first judge by Gov. Daniel D. Tompkins. He held this office until June 16, 1818, when the term of office of each judge of the Common Pleas in this state was declared to be at an end by an act of the legislature of that year. Not having been educated by previous study or habits to fit him for a high judicial position, he had felt for some years his anomalous position before the bar, and desired to retire from the bench. He was admirably fitted for a judge in equity, but on the law side of the courts he appreciated the want of a thorough knowledge of its intricacies. Therefore, when Governor De Witt Clinton reorganized the Court of Common Pleas for this county in June, 1818, he gladly relinquished his seat on the bench to Hon. James Thompson, as one fitted by education and training to administer the law. He accepted the office of Judge of Common Pleas on the same bench for the term of five years. In 1821, he was a member of the constitutional convention, and in 1828 was chosen a member of the electoral college and cast his vote for John Quincy Adams. This was his last public office. He was also supervisor of Green-

field in 1804-5-6-7. He was a prominent member of the Milton Baptist church, (Stone church) and had much to do in the formation and maintenance of that society, in the then new settlement where he resided. He was one of the six or eight men in Greenfield who formed one of the first temperance societies in this county, in 1809. "He was," says Rev. Thomas Powell, his former pastor, "one of the most conscientious and consistent christians I ever knew." About twenty years previous to his death he removed with his family to the west, and died January 28, 1856, in the ninety-fifth year of his age, at his residence in Walworth county, Wisconsin. He was one of the first settlers of that county and was instrumental in having it named in honor of his old friend, Chancellor Walworth.

First Judge James Thompson was the son of Hon. John Thompson of Stillwater, the first incumbent of that office. He was born in that town, November 20, 1775, and was nurtured among the stirring times in that region which preceded and followed Burgoyne's invasion. He was educated at the academy in Schenectady which was the germ of Union college. He was a member of the same class with Rev. Joseph Sweetman James Scott, Levi H. Palmer and George Palmer. (Mr. Sweetman remained another year and was a member of the first senior class of old Union, graduating in July, 1797.) Mr. Thompson, at the wish of his father, embraced the study of law and entered the office of James Emott, son-in-law of Judge Beriah

Palmer, who had established a residence and office at the latter's home near Burnt Hills. (After the death of Judge Palmer, Mr. Emott returned to his former home in Poughkeepsie, from whence he was chosen to the assembly in 1813, and was elected speaker. In 1818, he was appointed first judge of Dutchess county, and appointed circuit judge in 1821.) Among the fellow students of Mr. Thompson in Judge Emott's office were Daniel L. Van Antwerp, Samuel Cook and Samuel Young. They were admitted to the bar of Common Pleas in 1799. Mr. Thompson soon after married the daughter of Abel Whalen of Milton, and purchased what was known as the Sprague farm in Milton, now, however, recognized as the "Judge Thompson place." Here he opened an office and soon entered upon a lucrative practice. At this day it would seem the height of folly for a lawyer to open an office in the country, but at that time steam traveling and business centers were unknown and clients sought counsel where good advice could be given in settling the vexed land title questions, that in those early days perplexed courts, counsel and juries to unravel. That his advice was satisfactory to his clientage is shown by the frequency in which his name appears in the minutes prior to 1818. On June 16, of that year, he was appointed first judge of Common Pleas for the term of five years and was re-appointed for two successive terms. His career as a judge was marked by vigor and force, though he was not a favorite of the bar generally. His roughest nature

was outermost, and it was only in the closer intimacy of friendship that he could be clearly known and his worth appreciated. In person and manners he was dignified, and bore a striking resemblance to the late Eliphalet Nott, president of Union college. Prof. Tayler Lewis esteems him as the "father of the Saratoga county bar," which in a measure he was. He certainly conferred high honor upon it. He was chosen regent of the University, February 7, 1822, and held the position until his death. The late George Thompson, John W. Thompson and James Thompson of Ballston Spa, and Edward D. Thompson of Lawrence, Kansas, were his sons. He died December 19, 1845. The Circuit Court was then in session, and the following entry is found in the minutes of the court as of December 20 :

"The decease of Judge Thompson which took place at his residence in Milton on the 19th inst. was announced by E. F. Bullard, esq., who after an eloquent and impressive tribute to the memory of the deceased introduced the following resolutions; which were adopted and ordered to be entered on the minutes of the court :

Resolved, That we have learned with the deepest feelings of sorrow and melancholy the decease of Hon. James Thompson, who presided in this court for fifteen years with eminent ability and to the general satisfaction of the community. In this dispensation of Providence the profession has been deprived of the counsel of their late associate and the county has lost one of its most talented, useful, worthy and distinguished citizens.

Resolved, That we tender to the family and friends of the deceased the expression of our sympathy and condolence upon this afflicting bereavement by which Providence has removed him from the domestic circle adorned by his private virtues, and from his high position which he occupied among our citizens as one of

the regents of the University, a uniform and devoted friend of the cause of science and education, and one who in the decline of life commanded the same confidence and respect which he had secured in his earlier years by the ability that distinguished his professional career.

Resolved, That a committee be appointed by the court to communicate a copy of these resolutions to the family of the deceased, and that the same be published in the county papers."

The court thereupon announced as such committee Messrs. Bullard, Scott and T. G. Young.

"On motion of John K. Porter, Esq.; *Resolved*, That the members of the bench and bar assume for thirty days the usual badge of mourning, and that as an expression of respect for the memory of Judge Thompson the court do now adjourn. Adjourned."

First Judge Samuel Young, who was appointed by Gov. Marcy to succeed Judge Thompson on the bench, April 30, 1833, was the son of Thomas Young, a Berkshire county (Mass.) yeoman, and was born in the town of Lenox in December, 1779. His father removed to Clifton Park in this county about the year 1785, and took a tract of land on the Appel patent, about midway from Burnt Hills to Groom's corners. Here he grew to manhood, a farmer's son. Schools were scarce and his opportunities for attending them were more so. Yet he felt within himself the talent and power of mind which aspired to higher things. His son, the late Thomas G. Young, Esq., of Saratoga Springs, informed me that he had heard his father tell of lying before the fireplace after a hard day's work in the field or woods and studying by the light of a pine knot long after the rest of the family were asleep.

He was essentially a self-made man, and by the rigorous course of study which he began in youth and never grew old enough to lay aside, he became possessed of a classical, scientific and general education such as few collegians aspire to. His state papers as a member of the Court of Errors and as superintendent of common schools have all the polish and elegance of language that would characterize the most devoted student that ever bore off the honors of his *Alma Mater*. A legal friend informs me that in 1845, he was commissioned by Col. Young to purchase for him some books at an auction trade sale in New York. Every work that he selected was of a classical or scientific nature. Conceiving an attachment for the science of the law, he entered the office of Judge Emott and completed the full course required by the rules, and commenced the practice of his profession. He soon after married Mary Gibson, the daughter of Hon. John Gibson of Ballston Center, and purchased the farm of Seth C. Baldwin at Academy Hill in that town, where he established his office and had a residence until his death. He was early called into public life, and no citizen of Saratoga county has ever been more highly honored in that capacity than he. He was supervisor of Ballston in the years 1809-10-12-13; elected to the assembly in 1814, re-elected in 1815 and again in 1826; senator in 1818 for four years, re-elected in 1835 and 1838. Resigning in 1840, he was again chosen in 1845, and served until the old senate was set aside, in 1847, by

the new constitution. He was speaker of the assemblies of 1815 and 1826. The latter year, Hon. John W. Taylor was speaker of the national house of representatives. Both were residents of the town of Ballston. It was a singular coincidence. By the act passed April 17, 1816, with Stephen Van Rensselaer, DeWitt Clinton and Myron Holley, he was appointed a commissioner to construct a canal from the Hudson river to Lake Erie. Other gentlemen were subsequently added to this commission. The result of their labors is that noble artery of commerce, the Erie canal.

Col. Young held the office of canal commissioner until 1840, when he was removed by a whig legislature and the influence of Thurlow Weed. In 1821, he was chosen with Judge Child, John Cramer and Jeremy Rockwell to represent Saratoga county in the constitutional convention. In 1824, he was the democratic legislative caucus candidate for governor to succeed Joseph C. Yates against DeWitt Clinton. He was defeated by a vote of 87,093 to 103,452; all the opposition elements uniting on Clinton. His mind was not fitted to deal with the trifling causes brought before him in Common Pleas for adjudication, and he retired from the bench at the end of his term. February 7, 1842 he was chosen secretary of state by the joint ballot of both houses of the legislature to succeed Hon. John C. Spencer. He became *ex officio* superintendent of common schools. Under his administration much was done to foster and build up our common school system.

He was an ardent advocate of free schools. His decisions as superintendent are incorporated in the "Digest" published with the "Code of Public Instruction," and are yet quoted as ruling on the points discussed. He was elected one of the Regents of the University in 1817 and held the position until 1835, when he resigned. He always retained a lively interest in agriculture, and on the conclusion of his term in the state senate in 1847, he retired to his farm in Ballston. He died suddenly November 3, 1850, in the seventy-first year of his age. He was in usual health up to the day of his death. He was about his business as usual and retired to rest. The next morning he was found in his bed asleep in death. Subsequent to the death of his first wife he married Mrs. Sarah Lasher of New Hurly, Ulster county, in 1827. She survived him several years. Thus closes the history of an active and honorable life. He acquired his *soubriquet* of "Colonel" as a member of Governor Tompkins' staff in 1816. Although a man of peace, it adhered to him through life, and he will be remembered as the genial colonel, rather than as the sedate judge.*

First Judge Thomas J. Marvin was the son of William Marvin, a merchant and hotel keeper at East Line in the town of Malta, where he was born

*On the fourth of July, 1826, the semi-centennial of American independence, Col. Young, being then speaker of the state assembly, presided at the celebration at Ballston Spa. Hon. John W. Taylor, then speaker of the house of representatives, was the orator of the occasion.

in June, 1803. His grandfather, Dennis Marvin, was one of the first settlers of the town, a few years prior to the Revolution. He was educated at the old Ballston Academy and at Union college, graduating in the class of 1826; and studied law with William L. F. Warren, at Saratoga Springs, and was admitted to the bar of Common Pleas in August, 1829. In due time he was admitted first as an attorney and then as a counselor in the Supreme Court, and Solicitor in Chancery. In 1836, he was appointed by Gov. Marcy to be a judge of Common Pleas, and two years later he was promoted to the presiding judge's seat, his commission dating from February 13; and held the office until 1847, when it was abolished by the adoption of the new constitution. Judge Marvin was a man of quick perceptions and was deeply read in the law. He was quick to see a point and to act upon it. When he saw that the strict construction of the law led to a certain end, though it might clash with the public demands or his own private wishes, he fearlessly did his duty. We have seen an instance in this in the manner in which he disposed of the second indictment against the notorious Isaiah Rynders.* He was a joint proprietor in the United States hotel, Saratoga Springs from 1832, and in 1842 he entered into a partnership with his brother, Hon.

*Justice Landon recently made a similar ruling in the case of C. Fred. Smith, indicted for arson at Johnstown. He had been tried and acquitted on the charge of murdering Edward Yost, and the arson charge was based on the same statements of evidence and facts.

James M. Marvin in the management of that house, which continued until his death December 29, 1852, in the fiftieth year of his age. He was supervisor of Saratoga Springs in 1851-2.

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CHAPTER XIX.

SARATOGA COUNTY JUDGES.

Augustus Bockes, 1847 to 1854. (See sketch of his life in Chapter xvii ; Saratoga's Circuit Judges.)

John A. Corey, 1854. Judge Corey was the son of Daniel Corey, a farmer living in Greenwich, Washington county, and was born November 5, 1805. He was a brother of Allen Corey, of the West Troy *Democrat*, and a cousin of Rev. Drs. Sidney G. and Daniel Corey, well known Baptist divines. He was educated in the common schools. He was a strong admirer of the terse old Anglo-Saxon speech, disdaining to use the hybrid Anglo-French words that are so rapidly creeping into our vocabulary ; he believed in calling a spade by its homely Saxon name, rather than an "agricultural instrument for delving the soil and allowing the atmosphere to permeate into the alluvial deposits." While on the bench nothing would cause him to betray a sign of impatience in listening to an advocate's argument sooner than a Latin quotation interlarded into the language in which in which it was couched. In his early manhood he adopted the profession of teaching. In 1824, he came to Saratoga Springs and established a residence in this county. He secured a situation in the office of the Saratoga

Sentinel, then published by the late G. M. Davison. While in that office he learned the "art preservative," and also used his pen freely in articles that made their mark at that time. He turned his attention to the study of law, and was successively a clerk in the offices of Judge Cowen, Judiah Ellsworth and Nicholas Hill, jr. He was admitted as an attorney in the Supreme Court in January, 1835, and was advanced to the degree of counselor in January, 1838; and was appointed examiner in Chancery in 1836. He commenced the publication of the *Saratoga Republican* in 1844, and continued it until 1853, when he sold the paper to Thomas G. Young, who afterwards merged it in the *Sentinel*. He continued, however, to be a contributor to the press until his last illness. He was elected supervisor of Saratoga Springs in 1849. The next year he was chosen clerk of the board of supervisors, and held the same position under the boards of 1852 and 1864-5 6-7. He was also for several years a justice of the peace of his town. On the resignation of Judge Bockes he was appointed to the position of county judge by Governor Seymour, February 6, 1854, to fill the unexpired term. During that year occurred the "Carson League" prosecution of illegal liquor sellers, and he fearlessly pronounced sentence upon all who were convicted in his court by imposing the full penalty of the law. This was used against him in the ensuing autumn when he was the democratic candidate for re-election, and he was defeated mainly through the liquor

dealers putting Gideon Putnam in the field against him as a third candidate. In 1855, he was tendered by President Pierce, through Secretary Marcy, the office of governor of Kansas territory, but declined the troublesome and dubious honor. Soon after this he was appointed United States Commissioner by Judge Nathan K. Hall, and retained the office until his death. He was one of the founders of the Saratoga County Agricultural Society, and was for a long series of years its secretary. While in this position he heard of many cases of sheep killing by vagrant dogs, and set to work to abate the nuisance. Through his efforts a law was enacted imposing a tax on dogs, and making it a valid defense in actions brought to recover damages for killing a canine to allege and prove that a tax had not been assessed and paid on the animal within the previous year. He died, after a lingering illness, April 29, 1873, in the seventieth year of his age. He married quite early in life a daughter of George Strover, Esq., of Schuylerville, who survives him. He left one son and three daughters.

James B. McKean, 1855-1859. Judge McKean is the eldest son of the late Rev. Andrew McKean of Halfmoon, one of the pioneers of Methodism in north-eastern New York. He was born in the town of Hoosick, Rensselaer county, in August, 1821, his father being at the time a circuit preacher. The home of Father McKean, as he was familiarly known, at that time was situated near the line of Vermont, and in the neighborhood of the celebrated

Mather's house, which by a conceit of its owner was so built that it stood in the states of New York, Vermont and Massachusetts. The family of Rev. Andrew McKean was an ancient Pennsylvania one, one of its members being Thomas McKean, a signer of the Declaration of Independence, who was his father's uncle. When the subject of this sketch was about seven years of age, his father took superannuate relations from the church to which his early manhood and prime had been devoted in long years of wearying and self-sacrificing itinerancy, and retired to a farm in Halfmoon, which he had purchased. It was situated about two miles southeast of Round Lake. Here Judge McKean's early life was spent. He received the rudiments of an education in the neighboring district school, and completed an academic course at Jonesville under the direction and instruction of Prof. Hiram A. Wilson, now of Saratoga Springs. After completing his studies, he taught several terms in the Jonesville academy as an assistant to Prof. Wilson. After this he opened a select school at Clifton Park village, which he was soon forced to relinquish on account of failing health. Several months later he entered the office of Gen. Bullard at Waterford, as a law clerk. District Attorney Ormsby was pursuing his studies in the same office at the time. After completing his course of study he was admitted to the bar of the state courts in 1847. Soon after he removed to Ballston Spa and formed a law partnership with Abel Meeker. In 1853, he was an

unsuccessful candidate for district attorney. His opponent was William T. Odell. Having in the meantime married Miss Catherine Hay, daughter of Judge William Hay of Saratoga Springs, he soon after removed his residence and office to the latter place. In 1854, he was nominated for county judge by the American party; his opponents were Judge Corey, democrat, and Gideon Putnam, whig. In this triangular contest he was the successful party and took his seat on the bench in January following. In 1855, he was one of the founders of the Republican party, claiming that it represented the true principles of Jeffersonian democracy in which his father had reared him. In the campaign of 1856 his voice was frequently heard on the rostrum declaiming for "free soil, free speech, free press and Fremont." In 1858, he was nominated by his party for congress, was triumphantly elected and was one of the staunch supporters of the Union in the secession times. In the latter days of Buchanan's administration he was one of that devoted band of minute men who guarded the Capitol against anticipated seizure by traitor hands. Having been re-elected to congress he left his seat in the extra session called by President Lincoln, and came north and issued a stirring address to the sons of this county to join him in forming a "Bemis Heights battalion." The result was the forming of the now historic Seventy-seventh regiment, of which he was chosen colonel. Under his command and that of his brave successor, Colonel Winsor B.

French, it gained an honorable record at Williamsburgh and in the seven days battles on the Chickahominy, and in following the fortunes of the "Sixth Corps' cross" on many well fought fields. While on the peninsula the weak constitution of Col. McKean yielded to a malarial fever, and he was forced to leave his regiment. Having partially recruited his health, he again took his seat in congress and did good service there in upholding the hands of his former comrades in the front, whom he was forbidden to rejoin by his physicians. At the close of his congressional career, he returned to Saratoga Springs and resumed the practice of his profession. Soon after President Grant's accession to office he tendered to Judge McKean the office of Chief Justice of Utah. He accepted the place with all its grave and complicated duties, and history will say that he was the first Federal officer in Utah who comprehended the deep laid designs of Brigham Young. By his fearlessness in administering justice under the laws he soon incurred the hatred of the Mormons and gained the good will of the other citizens of Utah. In 1875, Mormon influence prevailed upon the President to remove him from office. He at once applied for and was admitted to practice at the territorial bar, and has fixed his permanent home at Salt Lake city. The bracing air of the interior having restored him to good health, he hesitates to return to his native state. Besides in his civil and military career, Judge McKean is well known as a staunch Methodist and is

a prominent member of that communion. He was a lay member of the General Conference which met at Baltimore in May, 1876.

John W. Crane, 1859-1863. Judge Crane was born at West Milton in this county September 30, 1827; and is the son of Justus Crane, a distiller who was employed by the late Robert Spier. His maternal grandfather was William Bridges, one of the first settlers of Ballston Spa. He was educated in the common school and at Smith & Bang's and Prof. Hancock's academies at Saratoga Springs. Having an inclination towards the law he entered the office of William M. Searing as a clerk. He completed his studies in the office of William A. Beach, and was admitted to practice at the September General Term, 1852. Soon after he entered into the law partnership with William L. Avery and Franklin Hoag at Saratoga Springs. After the retirement of Mr. Avery the other members continued the partnership successfully until the election of Mr. Crane to the office of county judge; to which office he was nominated by the democrats in 1858. His opponents were Alembert Pond, republican, and Lemuel B. Pike, American. He was elected in November by a plurality of 323 over Mr. Pond, and a clear majority of 43 over both opponents. He retired to the practice of his profession on the conclusion of his term December 31, 1863, and enjoys the reputation of being one of the best office lawyers and most careful conveyancers in the county. He was elected supervisor of his town in

1863, and again in 1868 and 1869, and has also held various other posts of trust in his town and village. He made a good record on the bench.

John C. Hulbert, 1863-1871. Judge Hulbert was born in Pittsford, Vermont, February 12, 1817. His father, Luther Hulbert, removed to Malta in this county when his son was quite young, and established himself as a merchant at Dunning Street. He was a man held in high respect by his townsmen and held several town offices, and was appointed at one time a Master in Chancery. He educated his son in the home district school and at an academy in Saratoga Springs. During this time young Hulbert served an apprenticeship in the old Ballston Spa *Gazette* office, and learned the printer's craft, thus making him the second representative of the "art preservative" on our county bench. Determining to follow the profession of the law as a life vocation he studied successively in the offices of Thomas J. Marvin, Nicholas Hill, jr. and William A. Beach, and was admitted to the bar of Common Pleas in December, 1836, and about three years later to that of the Supreme Court. He early succeeded in gaining a substantial clientage, and, in 1847, he was elected surrogate and held the office until 1856, performing its complicated duties with honor and success. In 1862, he was the successful candidate for the office of county judge, and took his seat on the bench in January, 1863, and was chosen for two successive terms and made an upright and careful judge. He is now engaged in

a successful prosecution of his practice at the bar.

Charles S. Lester, 1871——. Judge Lester was born in Worcester, Massachusetts in March, 1825. His father died in his infancy, and the son found a home in the family of his maternal uncle, Judge John Willard, at Salem, Washington county, and was educated in the Salem academy. Having been reared in a legal air, his mind naturally inclined towards the profession, and he commenced his studies in the office of Crary & Fairchild in Salem, in 1842. In 1843, he came to Saratoga Springs and entered the office of Judge Willard where he completed the requisite course for an admission to the bar of the Supreme Court, to which he was admitted in 1846. Soon after, he formed a law partnership with William Cullen Bockes (brother of Judge Bockes) which continued until the latter's death a few month's later. Next, he and the late Frederick S. Root for two years enjoyed a fair practice together in our courts. After this, he formed a partnership with A. L. Bartlett and soon after his brother-in-law, Alembert Pond, was invited to join the firm. In 1859, he was elected district attorney by the democrats by 251 majority over Joseph A. Shoudy, the republican and American candidate. He served in this position three years and made a capable and fearless public prosecutor. At the outbreak of the rebellion, when party ties were loosened, he joined the republican party. In 1870, he was their candidate for county judge and was elected by a substantial majority over P. H. Cowen,

a son of the former judge, democrat. On the bench he has been noted for his urbanity to his professional brethren and the thorough manner in which he compels attorneys to place their cases before the juries. His term of office will expire next December. His eldest son Charles C. Lester, Esq., is now associated with him in Supreme Court and Court of Appeals practice. Their clientage is probably the wealthiest in the county, the firm having been for several years past the local legal advisers of the late A. T. Stewart, and are continued in the same relations by Mrs. Stewart. Judge Lester was elected supervisor of Saratoga in 1864 and re-elected in 1865.

The history of the Saratoga county judiciary requires a sketch of the gentleman who alone is the survivor of the forty-eight citizens who have sat upon its bench as judges of Common Pleas; viz. Hon. George Gordon Scott of Ballston Spa. Judge Scott was the only child of James Scott, a famous surveyor of the olden time, and was born at the family homestead in the town of Ballston, near the Milton line, in the year 1811. His grandfather, George Scott, was an emigrant from the north of Ireland who settled on that farm in 1774. He married the sister of Gen. James Gordon. During the Munro tory raid in 1780, he narrowly escaped death at the hands of the Indians, being, in fact, struck down with a tomahawk and left for dead. The subject of this sketch entered Union college and graduated in 1831, with one of the

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honors of his class. He then entered the law office of Palmer & Goodrich in Ballston Spa, where he remained two years; he finished his studies in the office of Brown & Thompson in the same village, and was admitted to the bar in 1834 and at once entered upon what has proved a more than ordinarily successful practice. Having always enjoyed the confidence of the people as a man of sterling integrity and a master of his profession, his counsel has been and still is much sought in causes involving intricate questions. It is rather as the counselor than as the advocate that he has secured and retained a prominent position at the bar. He has never sought office, and the positions that he has held have come to him conferred either by appointment or election without effort on his part. He married, soon after his admission to the bar, Lucy, daughter of Hon. Joel Lee of Ballston Spa. Having established his home in the Milton portion of that village, he was elected justice of the peace in 1837 and discharged its duties till 1849. In 1838 he was appointed judge of Common Pleas for five years, but resigned in 1841, preferring his practice to the honor of the bench. He was elected to the assemblies of 1855 and 1856; serving in the former on the Ways and Means and in the latter on the Judiciary committees; his merits being thus recognized by speakers Littlejohn and Robinson. He was tendered the speakership of the house of 1857, but declined, preferring to serve on the floor. In 1861, he was honored by his party with the nomi-

nation on the state ticket for the office of Comptroller. In 1857, he was elected by the democrats of the 15th district to the state senate in the face of an adverse party majority, and served on the committee on Claims, Insurance, Judiciary and Towns and Counties. In 1859, he removed into his native town, (his residence being on High street nearly opposite the county clerk's office) and the next year he was chosen supervisor, and has repeatedly been re-elected and is now serving his seventeenth term, an honor conferred on but one other citizen of the county : viz, Gen. Mott of Halfmoon. He was chairman of the board in 1863, and has repeatedly been appointed attorney of the board to confer with the state assessors. Possessed of an extensive memory in which is stored away the tales of revolutionary times told him by his father and other old residents, he has long been regarded as an encyclopædiæ of local historical and topographical lore, and on that account was fitly designated to prepare the county centennial historical address which he read at the celebration of the close of the first hundred years of our nation, at the Sans Souci hotel, July 4, 1876. Judge Scott possesses an iron frame and belongs to a long lived ancestry, and we may cherish the hope that the "last link" will remain unbroken for many years.

CHAPTER XX.

DISTRICT ATTORNEYS AND COUNTY CLERKS.

The office of district attorney was created by an act of the legislature of 1801. Its intent was to create a local prosecuting officer who should fill the place of the attorney general in the Oyer and Terminer and Sessions of the country counties. In that of New York the attorney general was to officiate personally. Previously, by an act passed February 12, 1796, the state had been divided into seven districts, in each of which an assistant attorney general was appointed, to hold office during the pleasure of the governor and council. Albany, Saratoga, Schoharie and Schenectady counties formed the fifth district. Abraham Van Vechten of Albany was appointed to the office February 16, 1796, and held the position one year, when he was superseded by the appointment of George Metcalfe of Stillwater. Under the act of 1801, Montgomery county was added to the fifth district. Mr. Metcalfe was appointed district attorney. The following is the succession till 1818, when the office was limited by act of legislature to each county : Daniel L. Van Autwerp of Saratoga, March 16, 1811 ; Daniel Cady of Montgomery, February 28, 1813 ; Richard M. Livingston of Saratoga, February 16, 1815.

The act of April 21, 1818, decreed that an officer to be called the district attorney should be appointed for each county by the governor and senate, to be the public prosecutor therein. This was modified by the constitution of 1821, which gave the appointing power to the Court of Sessions. Accordingly, on the 11th of June, 1818, Richard Montgomery Livingston was appointed the first district attorney of Saratoga county. He was the son of Col. James Livingston of Albany, and belonged to the noted Columbia county family; his father being a relative of the wife of Gen. Montgomery, and was an officer under him in the ill-fated Quebec expedition, in which the gallant Irish patriot lost his life. Entertaining a feeling akin to reverence for the memory of his brave friend, Col. Livingston named his first-born son in his honor. Mr. Livingston settled at Schuylerville and was the attorney and agent of the Schuyler family. He was, it is said, a lawyer of ability. One fault of his has been handed down to our times; it was that which sometimes affects modern officials, neglecting public duty to attend to private business. Two instances are on record where he failed to attend the terms of court, and a special district attorney had to be appointed: viz. the terms at which the Northrup murder indictment and that against jailor Taylor were disposed of. The latter instance created strong feeling against him and, in 1821, a change of the political tide caused his removal.

District Attorney William La Fayette Warren

was born in Troy, February 4, 1793. He was of patriotic ancestry ; his father was Capt. John Warren, an *aide* to Gen. La Fayette, and his mother was Elizabeth Belknap, daughter of Major Isaac Belknap of Newburgh, a revolutionary veteran. Having been carefully prepared by a full academic course at Ballston, the future judge entered Union college, from which he was graduated in the class of 1814. He began the study of law in the office of Esek Cowen and was admitted to the bar of the Supreme Court in 1817, and immediately entered into partnership with his preceptor. This continued until the appointment of Judge Cowen to be reporter of the Supreme Court in 1824. During this close and confidential intercourse Judge Cowen depended much upon the sound judgment of his more youthful associate. As stated in the body of this work Mr. Warren was appointed district attorney February 13, 1821 by the council of appointment and was continued in office by the judges of Common Pleas, until September 6, 1836. In 1824, he was appointed Master in Chancery and, justice of the peace ; and, he held the office of judge-advocate of the 15th division of infantry in the state militia from 1823 to 1831, and was appointed judge of Common Pleas in 1843, by Gov. Bouck. He filled every office with credit to himself and honor to the county, and pursued his profession *con amore*, never fully relinquishing his practice. He was an impressive advocate before a jury and an influential and safe counselor in

argument before the bench. He married Miss Eliza White, daughter of Epenetus White, jr. of Ballston Spa, and granddaughter of Judge White, one of the pioneers of the town of Ballston, who survives him. Possessed of great public spirit, he did much to elevate Saratoga Springs into prominence as a watering place, and was one of the originators of the Saratoga and Whitehall railroad. Judge Warren was of medium stature, comely in person and stately manners ; yet possessed of that, which the French term *bonnehomie*, which attracted the attention of strangers at their first meeting and endeared him to his friends. Deeply religious in thought, through his long life he illustrated the life of a Christian in his daily walk and conversation, and was for many years a ruling elder of the First Presbyterian church at Saratoga Springs. He died May 23, 1875. Having been for several years the patriarch of the county bar, at the next term of the Circuit Court, on motion of Judge Lester, customary resolutions of respect were adopted. A feeling eulogy was pronounced by Judge Scott, an associate of the deceased at the bar for thirty years. Addresses were also made by other members of the bar, and Judge Landon adjourned the court, after directing the clerk to make the suitable entries on the minutes.

District Attorney Nicholas Hill, jr. was born in Florida, Montgomery county in 1805, of which town his grandfather, John Hill, a native of county Derry, Ireland, was an early settler. His father

was a revolutionary soldier and was with Washington at Yorktown. Mr. Hill was admitted to practice at the bar of the Supreme Court in August, 1829, and forming a partnership with Deodatus Wright they opened an office in Amsterdam. Shortly afterwards, he removed to Saratoga Springs, where he was associated with Judge Cowen in the preparation of "notes" to Phillips' Evidence. Removing to Albany about 1840, he was appointed Supreme Court reporter in 1841, to succeed John L. Wendell, and held the position until 1844, when Hiram Denio was appointed. He published the seven volumes of "Reports" which bear his name. In Albany, he at first formed a legal partnership with the late Deodatus Wright and Stephen P. Nash. Subsequently, he was the head of the eminent legal firm of Hill, Cagger & Porter; his associates being the late Peter Cagger and Hon. John K. Porter. The firm stood at the head of the Capitol city bar and occupied a high rank in the state. He died May 1. 1859.

District Attorney Chesselden Ellis was born in New Windsor, Vt., in the year 1808. He was graduated from Union college in the class of 1823, and having studied law with Hon. John Cramer of Waterford, he was admitted to the bar in 1829, and soon established a lucrative practice in his profession. Naturally diffident, although a vigorous debater when aroused, he preferred to be known rather as a counselor than as an advocate. He had a keen bright eye that would dilate as he became

engaged, and its glance would seem to penetrate through the subject upon which it was directed. He was five feet nine inches in height, of splendid *physique*, weighing about 180 pounds. To a sound body was united a mind strongly imbued with fine literary tastes. He was appointed district attorney April 25, 1837, on the resignation of Nicholas Hill, jr., and held the office until September 11, 1843, when he resigned to take his seat in congress. Mainly through the unsought personal influence of his law partner, Gen. E. F. Bullard, he was nominated for congress by the democratic party in 1842 and was elected. When congratulated on his election he said he was "frightened at the prospect." A strong admirer of John C. Calhoun, he was the only congressman from this state who was on intimate terms with the great South Carolinian, and he voted in favor of the annexation of Texas by joint resolution. He had great personal influence with President Tyler ; and, on the death of Judge Smith Thompson, the appointment of the vacant place on the Supreme Court bench was placed at his disposal ; he designated Judge Cowen, but the latter declined the honor. Chancellor Walworth was then appointed, but was finally rejected by the senate on political grounds. The place was subsequently filled by President Polk who appointed Judge Samuel Nelson. Mr. Ellis was a candidate for re-election in the exciting campaign of 1844, but was defeated by a small majority by the whig candidate, Hon. Hugh White. In 1845, he removed

to New York city and established himself in the practice of the law at the head of the legal firm of Ellis, Burrill and Davison. (The latter is Charles A. Davison, son of Gideon M. Davison, of Saratoga Springs.) He died in 1854.

District Attorney William Augustus Beach is a native of the village of Ballston Spa, and was born at the residence of his grandfather Warren, in the building on Front street known for many years as the "Mansion House." His father, Miles Beach, removed to the town of Ballston in 1786, with his father, Zerah Beach, from Salisbury, Conn. On his mother's side Miles Beach was related to Judge Smith Thompson, formerly chief justice of the state and afterwards associate judge of the United States Supreme Court. He married, in 1807, Cynthia Warren, sister of Judge William L. F. Warren. The subject of this sketch was their second child. In 1809, some years previous to the birth of his illustrious son, Miles Beach removed with his family to Saratoga Springs, and engaged in mercantile pursuits. His venerable widow yet survives, and completed her eighty-eighth year August 2, 1876. Their distinguished son received a good academic education at Col. Partridge's Vermont military institute, and was bred to the bar under the direct tuition of Judge Warren, who took judicious care that the foundations of his legal knowledge should be laid broad and deep. Early indicating the passion for forensic debate which has distinguished him through life and has led him up the ladder of

fame to the topmost round, he acquired the use of a vocabulary stored with terse and comprehensive Anglo-Saxon; and it has always been remarked that he talked to the understanding of jurors rather than seeming to confuse them with long-drawn periods, full of sounding words formed from the Latin roots. In this respect he more nearly resembles Daniel Webster than any other living American lawyer. He was admitted to the bar in August, 1833. At one time he had thoughts of removing to the West, but abandoned the idea and remained in the practice of his profession at Saratoga Springs, and soon came to the front rank in this county. He was appointed district attorney September 11, 1843, and held the office until June, 1847, when his successor, elected under the constitution of 1846, was qualified. A few years later he removed to Troy, and, forming a law partnership with Job Pierson and Levi Smith, he continued the practice of his profession until his removal to New York, about seven years since. While living in Troy there were but few actions tried in the Rensselaer, Albany, Saratoga or Washington Circuits or Oyers in which he was not engaged as counsel. To secure William A. Beach's services was to many litigants an assurance of success. And, if failure met his efforts, which it did but rarely, it was not because he had not exerted his full strength of legal talent and persuasive eloquence. In New York he is the head of the firm of Beach & Brown, his associates being his son, Miles Beach, and A. C. Brown.

His rank at the metropolitan bar is in the circle which embraces such names as O'Connor, Evarts and Porter. Recently he was senior counsel for the plaintiff in the celebrated action brought by Theodore Tilton against Henry Ward Beecher. But, perhaps, the instance in which his talents had the largest field for action, and in which he stood in the full plenitude of his legal fame, was his appearance as senior counsel for the defense in the great impeachment trial of Judge George G. Barnard before the Court of Appeals and Senate, sitting as a Court of Impeachment, in the town hall, Saratoga Springs, in July, 1872, to which place it had adjourned. In the management of his case, his cross examination of the impeaching witnesses (next to his matchless eloquence his strongest *forte*) and his final appeal were such as are seldom equalled and never excelled in the annals of jurisprudence. That he was unsuccessful in gaining an acquittal was due to the conduct of his client during the trial and the political clamor for his removal from the bench. There was one beautiful feature connected with this trial. The venerable mother of Mr. Beach had never heard her famous son in the forum, and at the beginning of each day's session of this trial he would gallantly escort her to a seat on the right of the Lieutenant Governor, and then take his seat across the bar, facing her. When he came to his final address to the court, in a tribute to maternal love, alluding to the anxious waiting of the mother of the accused, he advanced towards

his own venerable parent and in a strain of pathetic and impassioned eloquence poured forth his tribute of filial devotion. Its effect was highly demonstrative and there was not a dry eye in the vast auditory as the great lawyer stood as a child in the presence of her who gave him being and acknowledged that his all was owing to the sanctity of her prayers and maternal counsels. The personal appearance of Mr. Beach is known to all of my readers. Of a tall and commanding figure, straight and erect as a model of Grecian statuary, with aquiline features and eagle glance his is a form and countenance easily marked among men as one ranking above his fellows. His once raven hair and beard, the latter worn only on the chin, is now of the snowiest hue. But still his iron constitution and indomitable will power renders him yet a man in his prime. Time sits lightly on him and he has many years of usefulness in the profession he has honored with his name and fame. Socially he is one of the most gifted of men, strong in his friendship and genial in every sense of the term. The only persons who can say that there is a harsh side to his nature are those who have endeavored to give a "crooked" version of a transaction on the witness stand, and then saw only his rigid countenance and fiery eye, as he forced the truth from their lips under a searching cross examination.

District Attorney John Lawrence of Waterford is a native of Stillwater. In his early manhood he was a successful school teacher for several years.

He studied law in the office of Porter & Waldron and was admitted to practice in May, 1847. In June of that year he was elected district attorney, the first under the new system. He married the sister of Hon. John K. Porter and practiced his profession for several years in Waterford. Afterwards, he removed to Chicago, where he embarked in mercantile pursuits. Gaining wealth, he retired from business last year, and returned to Waterford, where he has again established his home.

District Attorney William T. Odell was the son of William Odell, a farmer of the town of Ballston, and was born in the year 1814. Educated in the common schools, supplemented with an academic course, he for several years followed the profession of teaching and civil engineering. He then studied law with Judge Scott, and was admitted to practice at the bar in 1841. He married the daughter of Alpheus Goodrich of Ballston Spa, and entered upon a fair practice in that village. He was elected district attorney in 1850, and re-elected in 1853. He was an unsuccessful candidate for the same office in 1856, and again in 1868. An ardent democrat, he never refused to lead the forlorn hope of his party in this county, and was their candidate for congress in 1858, for the state senate in 1863, and for the assembly in 1873. He was supervisor of Milton in 1858 and 1860, and was chairman of the board in the former year. His advice was accepted by a large clientage, and prior to the general prostration of his health, about two years

previous to his death, his practice was one of the largest in the county; as is shown by the successive court calendars. He died March 8, 1875. At the May Circuit, his death was announced at a meeting of the bar and the customary resolutions were adopted.

District Attorney John O. Mott is a grandson of Zebulon Mott, an agriculturalist of Halfmoon, who represented that town in the board of supervisors from 1801 to 1817, inclusively. The latter year the town was designated by the name of Orange. In 1820, its name was again changed to Halfmoon. Young Mott studied law with Hon. John K. Porter, and was admitted to the bar in 1854. At first opening an office at Crescent, he soon afterwards removed to Waterford, where he formed a law partnership with Hon. Cornelius A. Waldron, the present surrogate. He was elected district attorney in 1856. Several years since he removed to New York city. He is yet in the prime of life and has secured a good clientage in his new field, and was recently, in connection with William A. Beach, counsel for Pesach N. Rubenstein, the Polish Jew murderer, managing his case with consummate skill. He is reckoned among the rising lawyers of the metropolis.

District Attorney Charles S. Lester, 1860-3. (See *ante*, County Judge Lester.)

District Attorney Isaac C. Ormsby of Waterford is a son of Ira Ormsby a farmer who tilled the rugged soil of Greenfield, near Porter's Corners, where

his son was born April 24, 1820. The latter was educated in his home district school. The last term that he attended was taught by Judge Bockes. Next, he in turn taught school for several winters, but having determined upon his future course in life, he entered the office of Ellis & Bullard in Waterford in the year 1845, was admitted to practice in Common Pleas in December, 1846, and to the bar of the Supreme Court in the following June. He began a successful practice at Waterford, which he yet retains. Mr. Ormsby is of medium stature and of a vital temperament, his mind is of a quick intuitive turn ready to seize a point at an instant, a quality of eminent use in the duties he has so long and ably performed. Naturally not a fluent speaker, when he becomes warmed in his subject he speaks strong, terse English that is both forcible and to the point. He was elected district attorney in 1862, and re-elected in 1865. In 1868, he was not a candidate; but was, however, again chosen in 1871, and re-elected in 1874. He is a fearless and honest public officer and a faithful public prosecutor. A Supreme Court justice, who has held several of our Oyer and Terminers, said of Mr. Ormsby's appearance before a jury as a prosecuting attorney: "Without the eloquence of Mr. Beach, but with his earnest manner and thorough preparation he is a more dangerous adversary than Beach, before a Saratoga county jury."

District Attorney Winsor Brown French is the son of Luther French, a former citizen of Cavendish,

Windsor county, Vermont, in which town the subject of this sketch was born in 1832. His father removed to the town of Wilton, in this county, in 1836, where his son enjoyed in his boyhood the advantages of the common schools. Conceiving a taste for a liberal education, he was fitted for college at the Clinton Liberal Institute and the Woodstock academy, and entered Tuft's college, Medford, Mass., from which he was graduated in the class of 1859. Among his classmates was General Selden Connor, now governor of Maine. Such was his desire to obtain his college degree that he maintained himself during his course by teaching common and singing schools in the northern towns of this county during his vacations. Soon after leaving his college he entered the law office of Pond & Lester, in Saratoga Springs, as a student, where he was when the flag waving over Fort Sumpter was fired upon. When Hon. James B. McKean, in the summer following, issued his stirring call for a Bemis Heights batallion, he at once volunteered for the war and recruited a company from the town of Wilton, of which he was chosen captain. When the battalion became the seventy-seventh regiment he was appointed its adjutant, and was successively promoted to be major, lieutenant colonel and colonel, sharing its fortunes on every field in Virginia, from the memorable charge at Williamsburgh to the Forks of the Appomattox as it followed the "cross" of the sixth corps. At Cedar Creek, on the "Winchester pike," October 19, 1864, after the

fall of Colonel Bidwell he succeeded to the command of the third brigade. As Sheridan rode his black charger "from Winchester twenty miles away," he dashed up to where French's brigade held the left and emphatically told them to 'stand firm.' The brave French responded that his men could not stand under such a fire, but if the word was given he would charge the rebel line. "Charge," thundered Sheridan, and the survivors of the third brigade under its youthful leader rallied on their colors and, sweeping over the stone wall, bore the rebels before them. This was the signal for the charge along the whole line which sent Early whirling up the valley. For this intrepid discharge of his duty he was, on the recommendation of Gen. Sheridan, brevetted brigadier general "for gallant and meritorious service at Cedar Creek, performed under the eye of his commanding officer." At the close of the war he was mustered out of the service and laid aside the sword for the pen, exchanging the battle field for the forum. Having been admitted to the bar in May, 1861, he now formed a law partnership with Alembert Pond, which still exists under the name of Pond, French & Brackett. He was chosen district attorney in November, 1868, and served acceptably for three years from the first of January following. He is a pleasant speaker and an able debater. In politics he is a republican, but in 1872 his devotion to principle led him to support and vote for Horace Greeley for president.

COUNTY CLERKS.

The office of county clerk was adopted by the constitution of 1777 from the colonial system, and the incumbents were continued in office, provided they adhered to the patriot cause. They were appointed by the governor and council and held office at their pleasure. Hitherto clerks of Common Pleas and Court of Sessions, by the act of February 12, 1796, they were made clerks of the Circuit Court and Oyer and Terminer. Since 1822, they have been elected for terms of three years. The present constitution makes them clerks of the Supreme Court in their several counties. By virtue of their office they are registers of deeds and mortgages, except in the counties of Westchester, Kings and New York, where special officers are chosen as guardians of the public and private records.

Concerning Dirck Swart, the first county clerk of this county, but little is known to the present generation beyond the facts to be learned in the public records. He was a miller and lived at what is now Stillwater village. It would seem that he was an ardent patriot, for his name appears as one of the delegates from Albany county to the first colonial convention which met at New York, April 20, 1775. He was a firm friend of Gen. Philip Schuyler. During the summer of 1777, Schuyler's headquarters were established at his house. (Yet standing in the north part of the village and now, or recently, the property of Mr. James March.)

From it Arnold marched to the relief of Ganzevoort at Fort Stanwix, in August of that year. He was a member of assembly from Albany county from 1780 to 1785, inclusively, and also, of the convention which met at Poughkeepsie, June 17, 1788, to deliberate upon the adoption of the federal constitution. From the records it does not appear that he voted upon the question of ratification. Four of his colleagues voted no, and two beside himself abstained from voting. Thus Albany county appears upon the records as unanimously opposed to the adoption of what has long been known as the "paladium of our national hopes." He was appointed county clerk of Saratoga county by Gov. George Clinton, February 17, 1791, and held the office thirteen years. He kept the records at his residence, and from them, as they now appear, it is known that he was possessed of two inestimable qualities in a recording officer: viz., he wrote a round, plain and legible hand and used an unfading quality of ink.

County clerk Seth C. Baldwin was one of the early settlers of the town of Ballston, living on what has long been known as the Col. Young farm. He was a man of prominence in those early days, having been elected to the state assembly for three years from 1797, and was elected supervisor of Ballston in 1793, and again in 1800-1. In the latter year he was appointed sheriff. He held that office until February 17, 1804, when he was appointed

county clerk, and held the office for nine years, keeping the records at his residence.

County clerk Levi H. Palmer was a son of Judge Beriah Palmer of Ballston, and was graduated from Union college in the class of 1799. He studied law, and practiced his profession for several years at Ballston Spa, living and having his office in the house near the west end of Front street, now owned by Miss Catherine Bradley. He was appointed clerk March 5, 1813, and held the office two years ; he removed the records to Ballston Spa and kept them in his law office. He was largely engaged in suits involving patent land titles and suits in partition. Subsequently, he removed to Albany and continued the practice of his profession.

County clerk William Stilwell was born in that part of the Van Rensselaer manor which is now a part of the town of Stephentown, Rensselaer county, in the year 1766. He was apprenticed to the cabinet trade, and in the latter years of the last century he established himself in that business in the new settlement at Ballston Spa. At one time he had his shop and residence near the V corners on the farm now owned by the heirs of Harmonis Peek. Afterwards, he removed to the village to the residence which he built and designated as Mount Moreno, being the place recently owned by Jonathan S. Beach at the corner of Milton avenue and Pleasant street ; his cabinet shop was then in the building now occupied as a residence by J. G. Christopher on Front street. He was appointed

one of the judges of Common Pleas in 1811, and county clerk February 17, 1815, and held the office three years. He kept the records at first in his cabinet shop, above mentioned, until he completed and removed to his residence on what is now Church avenue, and now owned and occupied by his son-in-law, the venerable Chester Clapp. Mr. Clapp was deputy clerk under Mr. Stilwell. Many of the records in his term were entered in the neat penmanship of Mrs. Clapp. Judge Stilwell died at Ballston Spa, April 12, 1854.

County clerk Thomas Palmer was, also, a son of Judge Beriah Palmer and a nephew of the Thomas Palmer who was one of the commissioners to survey the patent of Kayaderosseras in 1769. He was graduated from Union college in the class of 1803, studied law, and began its practice in Ballston Spa. On the death of his father, who was incumbent of the office, he was appointed surrogate, March 31, 1812, held the office one year, and was again appointed, February 17, 1815, and performed its duties until July 8, 1816. He was appointed clerk, June 16, 1818, and held the office until he resigned, January 1, 1833; having been elected under the constitution of 1821, and re-elected until that time. He was elected supervisor of Milton in 1822, and successively re-elected until and including 1832. When he was county clerk he kept the records, at first, in his office in the building now occupied as a residence by Alfred Noxon at the west end of Front street, Ballston Spa. In 1824, the legislature

authorized the erection of a "suitable building for the preservation of the county records," at an expense of \$1,000, and appointed Edward Watrous, Eli Barnum and Moses Williams a committee of construction. The result was the erection of the familiar stone edifice which for forty-two years was designated as the "county clerk's office." It was first occupied by clerk Palmer in the autumn of 1824. The occasion of his resignation was his appointment by the directors of the Schenectady bank (then a new institution) to be its cashier. He accepted the offer and removed to that city, where he died in 1855. No attorney in this county ever gained the confidence of the farmers to the extent enjoyed by genial "Tommy Palmer." Whatever he told them they accepted as legal truth, and he never belied their trust.

County clerk Alpheus Goodrich was born in Lenox, Massachusetts, June 10, 1874, from whence his father, Allen Goodrich, removed to the town of Galway, in the latter part of the last century. He was educated in Lenox academy, studied law with Judge James Thompson and was admitted to practice in 1811. Soon after, he formed a partnership with Judge Thompson which continued until 1821. He married Miss. Nancy Stocking of Lenox, in 1812; was elected clerk of the board of supervisors the same year, and served in that capacity acceptably, it would appear, for he was annually re-elected each year until and including 1840, the year preceding his death; he was appointed one of the

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superintendents of the poor in 1827, and re-appointed the next year ; he was chosen to the assembly in 1824, and again in 1827. In 1823 he removed from the Middle Line to Ballston Spa and formed a law partnership with Thomas Palmer. When the latter resigned the office of county clerk, Mr Goodrich was appointed by Gov. Marcy to fill the unexpired term, January 2, 1833. In November of the same year, he was elected for a full term and was re-elected in 1836. He died at his residence in Ballston Spa. April 28, 1841.

County clerk Archibald Smith was the son of Jeremiah Smith, one of the first settlers of Charlton. He was born December 13, 1788, and, after passing his youth on his father's farm, he fitted himself for college and was graduated from Union in the class of 1814. He next studied law in the office of Abraham Van Vechten in Albany. After his admission to the Dutchess county bar he opened an office in Poughkeepsie and built up an extensive legal practice. He was noted for his thoroughness in preparing his causes for trial, a quality that every successful lawyer possesses to a great degree. In the year 1830, his health failing, he gave up his practice and returned to Charlton to his ancestral acres, on which his sons, Martin H. and Theodore, now reside. Although never again fully entering upon the practice of his profession, he occasionally appeared at the bar of the Circuit and Supreme courts in this and other counties. Through the influence of Hon. Anson Brown he was nominated

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by the whigs for county clerk in 1839, against Alpheus Goodrich. A strong personal canvass was made and he was chosen by a small majority ; he served three years and was not a candidate for re-election. Mr. Smith was a ripe and thorough scholar, and like many others whose minds become imbued with classical studies he seemed to the casual observer to be abstracted from the present ; and he was thought to be gruff and marose. But his friends, those who knew the *man*, say that he was a true and generous friend. He died at his rural home in Charlton, May 6, 1869.

County clerk Horace Goodrich was the son of Alpheus Goodrich and was born in Milton in the year 1818. Receiving a good business education in the common schools and at Lenox (Mass.) Academy, he entered the county clerk's office under his father's administration as a registrar, and the fair pages of the records bear testimony to his careful habits and excellent penmanship. In 1841 he was chosen clerk of the board of supervisors, and the next year he was elected by the democratic party to be county clerk. He served one term and was defeated in 1845, in a close contest by James W. Horton, the whigs advocating rotation in office. The argument used in later days by the party press supporting Mr. Horton for his frequent re-elections is but an echo of the pleas put forth by the *Ballston Democrat* and *Saratoga Sentinel* in 1845, in favor of the retention in office of Mr. Goodrich. The former, in particular, plead his long con-

nection with and thorough knowledge of the details of his office. Soon after his retirement from the clerkship he accepted the position of teller in the Schenectady bank. of which his brother, William L., is now the cashier, removed to that city, and yet retains that position and residence.

County clerk James Watson Horton was born in the hotel yet standing at Academy Hill, Ballston, September 29, 1810. His father, Ezekiel Horton, was a native of Connecticut, and after his removal to Ballston was an inn keeper. Mr. Horton was educated at the old Ballston academy. In 1829, he came to Ballston Spa and entered the employ of Smith & Patchin, dry goods dealers. In 1836, he purchased the drug store established in 1824 by Dr. Jonathan Williams, (now kept by C. O. McCreedy & Co.,) and was appointed postmaster in 1841 by President Harrison. In 1843, he was removed by President Tyler. This act led to his nomination for clerk by the whigs in 1845, against the popular incumbent, who was supported by the democrats. The result was a triumphant election, which has been continued by ten successive re-elections to the present time. This long incumbency in this office has been exceeded in this state only by two instances: viz. Thomas Archibald, clerk of Warren county, who was first appointed February 13, 1821, and continued by elections until January 1, 1861—a period but a few days short of forty years. The other was the instance of Gov. George Clinton, who was appointed clerk of Ulster

county by the colonial governor Cadwallader Colden, December 12, 1760, and continued in office until his death in 1812, extending over an interval of fifty-two years. During this time he was for three terms governor of the state and twice elected Vice President of the United States. In the body of this work I have spoken of the reasons that have been potent in causing Mr. Horton's retention in office by the people. Attorneys and title searchers from other counties say that no other clerk's office in the state is kept in a neater or more accessible manner. As a citizen he is held in high esteem by his townsmen. For over thirty years he has been either vestryman or warden of Christ church, Ballston Lpa, and for several years its senior warden. He has been twice married; first to Mrs. Abba Peck, daughter of William Clark, formerly a well known inn keeper at the county seat, and after her death, to Miss Julia E. Betts, daughter of Harvey Betts of Troy, formerly deputy clerk of Rensselaer county.

CHAPTER XXI.

SHERIFFS OF SARATOGA COUNTY.

The office of sheriff is an important adjunct of our courts, for the incumbent is the executive officer who causes its mandates to be obeyed. Since the creation of our county its shrievalty has been held by twenty seven gentlemen, of whom but twelve are now alive. Prior to 1823, they were appointed and held office during the pleasure of the appointing power. Gen. John Dunning of Malta was the first successful candidate before the people for the office, and is noted for having held the position for three terms ; once by appointment, from 1819 to 1821, and twice by election for the terms of three year, beginning January 1, 1823, and January 1, 1829. and was also jailor for the period between 1819 and 1835. He was a prominent man in his town and held the office of supervisor for six years from 1813; and was also distinguished as an officer in the state militia, holding the rank of Major General. He was a citizen without an enemy and a public officer without reproach. He died October 15, 1850, and is interred in the cemetery at Dunning Street. He was in the 84th year of his age. The large public square at Dunning Street is a monument of his generous spirit.

Sheriff Lyman B. Langworthy was the son of Rev. Elisha P. Langworthy, the pioneer Baptist minister of Saratoga county, and was born in New Lebanon, Columbia county, N. Y., October 21, 1787. His father removed to Court House Hill in 1798, and the next year to Ballston Spa. On attaining the age of manhood he embarked in trade as a hardware merchant in that village, and also became quite prominent as a politician, editing for a time the paper published by Josiah Bunce and called the *Saratoga Journal*. It was particularly noted for its sharp thrusts at its federal opponent, the *Independent American*, edited by James Comstock. Mr. Langworthy was elected sheriff at the general election in 1825 and served three years. At the expiration of his term he removed to Rochester, N. Y., where he again embarked in the hardware trade. He was one of the projectors and builders of the Rochester and Buffalo Railroad. As its superintendent, in July, 1837, he drove the first spike in the first railroad west of Utica, now a part of the New York Central, and a connecting link in the great trans-continental line from ocean to ocean. He informs me that the receipts from travel over the road for its first week after completion was *ten dollars*. He afterwards lived twenty years on a farm in the town of Greece, Monroe county; but now resides in Rochester with his daughter, the widow of Judge Buchan of that city. Although on the verge of his ninetieth year, his mind is unimpaired and he delights to talk of his

early years, and the author is indebted to him for many interesting incidents related in these pages. Time has indeed dealt gently with him, and the weight of his advanced years has but slightly bowed his tall and stalwart frame.

Sheriff Joseph Jennings was born in the town of Ballston, near the hamlet that is known as Hop City, December 23, 1786. His father Edmund Jennings, settled there shortly before the revolution. Mr. Jennings was brought up as a farmer and intended that to be his life vocation. When he was about thirty years of age, he was prostrated by a long sickness which rendered him unable to perform agricultural labors. Having been chosen constable he removed to Ballston Spa, and soon after was appointed deputy sheriff by Gen. Dunning. He at last gave up his intention of returning to farm life and purchased the Milton House in that village, which he conducted until about ten years since, and which is still his home. He was elected to the office of sheriff in 1834, and served until January 1, 1838. He is the oldest living ex-sheriff, although Mr. Langworthy antedates him in office nine years. In his prime, he was one of the most influential men in this county, and the opinion of "Uncle Joe" was sought and heard by many in matters political and otherwise. His family have all been gathered home, and the sole solace of his advanced years is the one granddaughter in whom is centered his affections. While belonging to an age that is past, he has ever kept a lively interest

in the present, and it is one of his proudest boasts that he has never slighted the freeman's privilege, but has voted at every election since attaining his majority.

Sheriff Isaac Frink was born in Milton, May 10, 1799. His father, Henry Frink, was one of the first settlers of the north part of the town, belonging to the Connecticut colony which settled the neighborhoods of Stone Church and South Greenfield, he was a prominent citizen and was elected supervisor in 1800-1. Sheriff Frink has been an agriculturist all his life, living on the farm he inherited from his father, and his house stands within a few rods of the site of the log house first erected by his ancestor. He was frequently called on to hold town offices and was supervisor for the years 1833-4-5-6-7. In 1844, he was the democratic and successful candidate for sheriff, and enjoys the distinction of being the last gentleman of that political persuasion to hold that important office in this county. He is yet in vigorous health, appearing to be a man of about sixty summers.

Sheriff Theodore W. Sanders was elected from the town of Corinth for the term beginning January 1, 1850. He had previously held the office of supervisor of that town in 1845-6. Meeting with financial reverses he resigned his office in 1852. He at present resides in the city of Albany.

Sheriff William T. Seymour is a native of Stillwater and was born about the beginning of this century. His father was one of the Connecticut

colony who settled near the Yellow Meeting house before the revolution. Sheriff Seymour was educated at Union college, taught school for several years, studied law and was admitted to practice. He settled at Waterford and soon after turned his attention to banking, and was for a score of years cashier of the Saratoga County bank. In 1852, he was appointed sheriff by Gov. Hunt, on the resignation of Theodore W. Sanders, and was supervisor of Waterford in 1844. He now resides in that town.

Sheriff Henry H. Hathorn is a native of Greenfield and is about fifty-five years of age. His father was a farmer and educated his son in the common schools and at Fairfield academy, in Herkimer county. (Among his classmates there were Rev. Zerah T. Hoyt of Greenfield, and Dr. William C. McKay, the famous Indian interpreter and chief of the Warm Spring tribe in Oregon, whose brother, Donald was the noted scout in the Modoc war.) Sheriff Hathorn, after completing his academic life, became a clerk in J. R. Westcott's store in Saratoga Springs. Next he embarked in hotel life as a joint proprietor of the old Union Hall, the first great hotel at the famous watering place. He then purchased an interest in Congress Hall, the management of which he retained until the present year; building after the disastrous fire of 1866 the present magnificent hotel known by that name. For many years he has been a prominent citizen of his adopted town, and was elected supervisor in 1858, 1860,

1866 and 1867. He was elected sheriff in 1852, and again in 1862, an honor hitherto conferred on only one person since the constitutional provision was adopted forbidding their election to successive terms. In 1872, he was chosen to the national house of representatives by the republican party, over Daniel B. Judson, democratic liberal ; and was re-elected in 1874, over Walter T. L. Sanders, democrat. His term will expire March 3, 1877.

Sheriff Philip H. McOmber was born in the town of Washington, Dutchess county, N. Y., in 1791. His father removed to Galway, in this county about the year 1796. Sheriff McOmber at first followed an agricultural life. He was appointed a deputy sheriff by sheriff Brisbin, in 1815, and was continued in that position for fifteen years. While holding that office he and his brother deputies, Potter Johnson and Joseph Jennings, prepared Benjamin Bennett in his cell the fatal day. Afterwards he embarked in mercantile and manufacturing business at Ballston Spa, and in his mill was woven the first cotton sheeting made in this county. In 1847, he was appointed jailor by sheriff Low and performed the duties of that office for twelve years. In 1856, he was elected sheriff, and after the expiration of his term removed to Saratoga Springs, where he now resides. Having recovered from a severe illness in 1874, he is now enjoying, one may almost say, robust health, and is able to take long walks about the beautiful streets of that village. He retains his memory unimpaired, and next to ex-

sheriff Langworthy his recollection dates further back than any other gentleman with whom the author has conversed on the topics embraced in this book; the incidents appearing as fresh to him as those of the great rebellion to the present generation.

Sheriff George B. Powell was born in the town of Milton, and was the son of Judge Elisha Powell, one of the early settlers and foremost men of the town half a century ago. He was a farmer in that town, and about fifty years of age when he was chosen sheriff, in 1858. During his term of office he was jailor in person, being the first incumbent since the time of Gen. Dunning who moved his family into the court house. At the expiration of his term, January 1, 1862, he removed to the city of Oswego, where he now resides, and embarked in the lumber trade.

Sheriff Joseph Baucus is a native of Schaghticoke, Rensselaer county and is now about seventy years of age. He purchased a farm in Northumberland in 1833, and removed to that town. He soon took a foremost position in his town, and has been chosen supervisor ten times, the first being in 1842. He represented the second district of this county in the assemblies of 1854 and 1856, and was elected sheriff in 1864. He has recently made his home in Saratoga Springs. His son, Alexander B. Baucus, is the present supervisor of Northumberland, and is serving his fifth term in the county legislature.

Sheriff Tabor B. Reynolds is a native of Wilton, and is a son of Dr. Henry Reynolds, a former well known physician of that town. His two sons, John and Tabor B., received good academic educations and were bred to their father's profession. The subject of this sketch was born in 1821. He was repeatedly honored with official trusts by his townsmen; he was town superintendent of schools from 1847 to 1852, and held the office of supervisor in the years 1856-7-63-4-5-6-7, and was chosen by the democrats and Americans to represent the second assembly district in the legislature of 1858. On the outbreak of the war, he joined the party which was sustaining the hands of the government and was chosen sheriff in 1868. Since his retirement from office, he has removed to Saratoga Springs, and is now engaged in an extensive and lucrative practice of his profession.

Sheriff Thomas Noxon was born in Beekman, Dutchess county, N. Y., in the year 1816. His father was a shoemaker, and Thomas was his second son; he removed to Clifton Park village, where the subject of this sketch received a good business education. He adopted at the first outset in life the business of a farmer and afterwards that of a merchant trading in the latter capacity for twenty-three years in Clifton Park village, of which he was postmaster under the administration of President Lincoln; he represented the town of Halfmoon in the board of supervisors during the years 1856-7-60-1-4-5-6. Such was his popularity

in that politically close divided town that the republicans deemed themselves sure to win if they could get his name on the head of their ticket ; he was elected sheriff in 1870, and removed to Ballston Spa, the county seat. On the expiration of his term he removed to Saratoga Springs, having retired from active business pursuits.

Sheriff Franklin Carpenter (the present incumbent) is the son of the late Daniel B. Carpenter, a worthy farmer of Corinth, and was born in the year 1830, was educated in the common schools and, like many other American youths, then for a few winters sat in the pedagogue's chair and enjoyed all the comforts of "boarding around." His life pursuits have been farming and lumbering. That he was highly esteemed by his fellow townsmen is shown by the fact that he has served four terms in the board of supervisors, the first year that he was elected being 1861 ; he was chosen sheriff in 1863 and his term will expire December 31, 1876. During his term he has resided in the court house and, after the first year, has been jailor in person.

The names of the deceased incumbents of the office of sheriff may be found in the "Civil Register," in the appendix of this volume.

CHAPTER XXII.

ANECDOTES, INCIDENTS, ETC.

THE OLD CRIER.

Those elderly citizens of the county who attended the courts in their early years will remember the aged crier, Major Ezra Buel of Stillwater. But little is known of his history beyond the fact that he was one of those anomalies of human nature—a bachelor without kith or kin. He came to Bemis Heights before the revolution and was thoroughly conversant with the field of battle, a fact which Gen. Arnold improved by using him as a scout and by designating him to guide Timothy Murphy and his squad of Morgan's riflemen to the ambuscade which resulted in the death of the daring and intrepid British Gen. Frazer. The author remembers hearing his father tell of having seen Major Buel, fifty years after the battle, designate the black walnut tree which marked the spot where Frazer fell, and the ravine in which grew the hazel copse from which Murphy fired his unerring rifle when Buel pointed out to him the "little man on the white horse" whom Arnold said was worth a whole army. He afterwards entered the army for the war. In 1791, Judge John Thompson appointed him crier of the county courts, which position he held till he

became so deaf that the court officers performed his duties and allowed him to sit in his chair and sleep. Finally, at the close of the August term of Common Pleas, 1833, the aged veteran arose and tendered to the judges his resignation of the office he had held for forty-two years, and thanked them in a very feeling speech for the courtesies they had shown him in his declining years. Judge George Palmer responded to the aged veteran, tendering him the thanks of the court and their good wishes to attend him in his declining years. The court ordered that his resignation be accepted and its manner to be entered on the minutes. The few remaining years of his life were comforted by a pension from the government for his revolutionary services.

JUDGE KENT AND THE MINERAL SPRING.

The late Col. Samuel Young used to relate the following anecdote of Chief Justice Kent. The Judge, when holding courts in this county, used to have his quarters in Ballston Spa, at Aldridge's hotel (now the residence of Henry A. Mann), so as to be near the old "iron spring," of the waters of which he was very fond, and rode in a chaise to and from the court house. At one term in a certain action then being tried he near the close of the day's session ruled a point of law, doubtless to his own satisfaction at the time if not to that of the discomfited counsel. The next morning, however, he was not so sure of its soundness, for he remarked

“hear ye” of the ancient form of opening courts. Sheriff Bull was the last official to wear a uniform, though the form of escorting the judges to the court house was kept up until about 1825. This Sheriff Bull was a “fellow of infinite jest” and enjoyed a good story. Adonijah Moody of Albany was an inhabitant of the “limits” during his term, and court weeks he and the sheriff would strive to see who could crack the strongest joke, practical or otherwise. ●

VAN ANTWERP'S FI. FA.

Among the attorneys who practiced in this county in early times was Daniel Van Antwerp of Stillwater, afterwards of Albany. It is said that he was a more careful violinist than attorney. Some of his legal mistakes were ludicrous. Once he issued a *fi. facias*, or execution as it would now be called, as a first process against a debtor against whom he had purchased a claim. The astonished debtor, who knew enough of the “law’s delay” to comprehend that this was not according to the approved practice, called at the office of Squire Van Antwerp and asked how it was that the sheriff had come to him with a *fi. fa.*, when no writ had ever been served upon him. The lawyer took down his register and on looking it over could find no mention of the matter, so he coolly said: “Well, I think there may be a little mistake. At any rate, if you will pay the amount of the bill, I will throw off half my fees.” The debtor settled on that basis,

after taking his seat on the bench : “ Yesterday I made a ruling excluding certain evidence, but I found last evening after going to my hotel, drinking some spring water and taking a walk, that I was in error, and I now reverse that decision.” The old spring having been re-opened, this incident is commended to the advocates at the bar at the present day. When the court makes a ruling adverse to them they should invite the judge to walk down to the spring and imbibe its waters. It may yet have the virtues that it possessed in the days of Judge Kent.

SHERIFFS IN THE OLDEN TIME.

In the olden time it was customary for the sheriff and his deputies to wear a uniform while attending court. The Sheriff as marshall wore a sword. When the hour for opening court arrived, the sheriff and deputies would proceed to the hotel where the presiding judge was a guest and escort him to the court house. Ex-sheriff Langworthy informs me that in his youth he remembers seeing sheriff Daniel Bull and his *posse* escort Judge Kent to his seat in the old court house. As the cortege approached the door it was flung open by Major Buel, who announced “ Their Honors, the Judges.” The line steadily marched up the aisle to the bench when the sheriff called out “ hats off,” and, saluting the judges with his drawn sword, stepped aside to allow them to pass to their seats, when the sonorous voice of the crier rang out the

and it was probably the only suit that was carried to a successful termination with such an irregular beginning.

JUDGE COOK'S WITHDRAWAL FROM THE BAR.

In the early days of our judicature it was a common practice for attorneys to purchase claims and then prosecute them. This grew to be such an evil that in 1818, the legislature adopted a regulation, since incorporated in the Revised Statutes, prohibiting attorneys from holding a pecuniary interest in any action which did not accrue to them on its inception. Judge Samuel Cook, who then transacted the triple business of attorney, banker and broker, deemed this an invasion of his constitutional rights, and in that year appeared in the several courts of the county and the Supreme Court and had his name stricken from the roll of attorneys on his own petition. Judge Cowen says that it was an unprecedented instance.

THE CHANCELLOR AT PINE GROVE.

Chancellor Walworth was wont to hold his court at "Pine Grove," for, like the gate of death, it was always open for the transaction of business. It was a great convenience to himself and to the bar generally, for they could thus combine business with ^{er}pleasure, as did the senate in 1872, when it adjourned to meet as a Court of Impeachment to try Justice George G. Barnard, from the capitol, in Albany to the town hall, Saratoga Springs. Here

at one time, in a case involving some Illinois state bonds, William Kent and George Griffin were matched against Daniel Webster. It drew such a crowd that the Chancellor was forced to adjourn to the Universalist church. "This cause will not end here," said Griffin, tragically, "we shall meet again at Phillippi." "Aye," replied the Jupiter Tonans of Massachusetts, while a broad smile of grim humor spread over his massive countenance, "the learned counselor will meet us again at Phillippi, but will he pay us our dues when we get there?"

WALWORTH'S TEMPERANCE PRINCIPLES.

Chancellor Walworth was as much noted for his total abstinence principles as was — — (another distinguished New York statesman), for his fondness for *eau de vie*. Gov. Seward at one time astonished a company by asserting that Chancellor Walworth and — — drank more brandy and water than any other two men in the state. The expressions of incredulity were modified when he explained that the chancellor drank all of the water

ADMISSION TO THE COURT OF CHANCERY.

In the later years of the Court of Chancery its strict discipline was somewhat relaxed, and applicants for admission to its bar found but few thorns planted in their path. The following is said to have been the form of examination of prospective solicitors pursued by master in chancery William L.

Avery, "You would commence a proceeding in chancery by filing a bill, wouldn't you?" Getting the affirmative answer, and the stated fee, he would sign the necessary certificate and send the applicant to the clerk. If there are any attorneys in practice in this county who came in through the door of the chancellor's court in the early part of 1847, they can tell if I have been informed correctly of the above mode of examination.

COWEN'S RETENTIVE MEMORY.

In the life sketch of Judge Cowen I mentioned his great powers as a listener. William L. Stone, the younger, relates an instance illustrating this. The eminent lawyer Samuel Stevens was once engaged in arguing a case involving important principles of law before him. He particularly wished to catch and engage the judge's attention, who commenced writing and was seemingly much engaged in his occupation. This piqued Mr. Stevens, and he became so worried that he mixed matters and was becoming badly confused. Suddenly Judge Cowen interrupted him with: "Mr. Stevens, you have several times in your argument referred to the eighth section of the act to prevent usury, as providing that all and every person sued for the same, shall be compelled to answer on oath to any bill preferred for discovering money taken usuriously. I do not understand the eighth section that way. Does the learned counsel so understand it?" "Certainly, I do." "Are you not mistaken?"

"I do not think I am, your Honor," said Stevens, "but I will see." Turning to the book of statutes he saw that he meant the fourth section. "Proceed," said the Judge, "I do not wish to interrupt you." Stevens said afterwards that Judge Cowen's interruption settled two facts in his mind: that the judge, with his seeming indifference, heard every thing that was said; and, that he was getting confounded by the court's apparent indifference to his argument.

COWEN'S COURT HABITS.

Allusion has been made to Judge Cowen's mode of *driving* business in his court. Major James R. Craig of Schenectady, relates the following incident that occurred in his boyhood. His father had been sued by a plaintiff who resided at Burnt Hills and the cause was tried at Ballston, before Judge Cowen. Young Craig was called as a witness one evening. About midnight, after he had been examined at length, a discussion arose as to the admissibility of the evidence. The witness fell asleep in the chair. How long the discussion was "spun out" he did not know, but he was suddenly awakened by Judge Cowen's saying: "You can answer the question." Rubbing his eyes the boy exclaimed: "what question do you mean, judge? I have been asleep." His examination continued until two o'clock in the morning, when he was allowed to grope his way to the Sans Souci hotel.

How much longer the court remained in session that night he does not know.

GOSSIPS' TALES NOT SLANDER.

A case was tried in the Saratoga Circuit in 1813 which curiously illustrates the doctrine of responsibility for the circulation of slanderous stories. There then resided in the town of Ballston two farmers who were neighbors. One was a deacon of his church, possessed of all the virtues ascribed to the worthy holder of that office in the Christian church, by St. Paul. The other often got into that mellow state ascribed in Holy Writ to Noah shortly after he had planted a vineyard. For our purposes, we will call them Deacon Amos Larkin and John Gibson. The latter was one day returning home from Burnt Hills in a little worse state than Burn's hero when he witnessed the witches dance in "Auld Alloway's haunted kirk." A Galway farmer, whom we will call Martin Sleazer, drove past him and asked him to ride. He got into the wagon and in reply to Sleazer's question told him he was Deacon Larkin. A few weeks afterwards Sleazer was in a company where the godly virtues of Deacon Larkin were extolled. He replied that he guessed Deacon Larkin was much the same as most men, for he had seen him drunk on the highway. Of course, this flew on the wings of the wind. Deacon Larkin soon found himself called before the church to explain how he had "fallen from grace." He demanded to see his accuser. Sleazer

was brought before him and saw that the Deacon was not the man he had taken him for, by any manner of means. From his description of his way-side passenger, John Gibson was recognized as the source of mischief. Deacon Larkin then commenced an action against Gibson for defaming his Christian character by reporting him to be a common street drunkard. Gibson replied to the effect that "*he* had never said that the Deacon got drunk." The cause was brought to trial before Judge Ambrose Spencer. It was tried for the plaintiff by James Emott, and it was his last appearance in our courts. Samuel Young appeared for the defendant against his old preceptor. After hearing the plaintiff's evidence Judge Spencer granted a motion for a nonsuit, holding that it was not slander for Gibson, in his reply to Sleazer's impertinent questions, to give him a fictitious answer regarding his identity. And, if the Deacon has sustained any damage, it was from the tongues of Sleazer and the gossips who had repeated his story.

JUDGE HAND AND THE DEAF JUROR.

Hon. Augustus C. Hand, one of the first justices of the Supreme Court for the fourth judicial district was noted for his prolix charges to grand juries, never failing to remind them of the rights of citizens under the constitution, and dwelling at length on the sundry statute offenses which would, or should be, laid before their grand inquest. At one of his courts in this county among the petit

jurors drawn for the term was Simon Visscher, an honest Dutch farmer of Halfmoon. He had the misfortune to be quite deaf and, on the calling of petit jury on the first day of the term, he stepped up to the bench and asked to be excused on account of his infirmity. "So you are quite deaf," queried His Honor, "could you not hear my charge to the grand jury, just now?" "Y-a-a-s, I heard it," falteringly replied Visscher, "but I couldn't make any sense on't." He was excused amid the suppressed laughter of the bar, some of whom thought that even a physically sound man would have been puzzled to do so.

THE ONE SOUND MINDED JUROR.

At another term Judge Hand was perplexed to discern why a jury, to whom a very plain question of fact had been submitted, could not agree. As he was walking down to the hotel after adjournment, he was joined by the late John Edwards, who was foreman of the jury. "How is it," asked the judge, "that you twelve men could disagree on so plain a statement of facts?" "The fact is," replied the foreman, "the evidence was all clear enough, but your charge so confused the other eleven, that they were the most contrary lot of fellows I ever had to deal with."

NOT A CLASSICAL JUDGE.

One of the judges who formerly presided on our bench was noted for his utter abhorrence of the

quotations of Latin maxims. Judge Rosekrans once, in a trial before him, quoted : "*De minimis non curat lex.*" The court immediately responded : "That was good enough law once ; but the statute has overruled it."

JUDGE CRANE AND THE IMPEACHING WITNESS.

Hon. John W. Crane once illustrated his possession of a ready wit by the following expedient, with which he broke down an impeaching witness. In an important cause one of his witnesses was sought to be impeached by his opponent. Among the witnesses called was one who testified strongly to the bad character borne by the witness in the neighborhood in which they both lived. Judge Crane was informed by a spectator that this witness himself had been impeached in a Massachusetts court. The following colloquy then ensued : "You say that where three or four men living in a neighborhood say in your presence that another neighbor is liar, you would not believe him yourself, even if he was under oath?" "Yes sir." "You would believe no man whom his neighbors say is untruthful, when no one says he is truthful?" "No sir, I wouldn't." "Were you ever in court at Worcester, Massachusetts?" "Yes, (faintly.) "Was your reputation at that time called in question?" The witness declined to to answer but was directed to do so by the court. "Yes." "Did not three of your neighbors then and there swear that they would not believe you under oath?" "They did."

“Did any one testify at the time that they would?”
“No.” “One more question, sir, would you believe yourself under oath?” Judge Crane did not press the question, and the, at first eager witness “stepped down and out,” wishing with Burns:

“O wad the Power some giftie gie us,
To see oursels as ithers see us.”

FATHER-IN-LAW, OR BROTHER-IN-LAW.

At one of the first terms held by Judge Willard under the new constitution there was tried an action between Stephen Deuel and Matthew Miller. The *res gestæ* was a contract about the working of some real estate of Deuel's by Miller to which one Aaron Dillingham was a witness: On the trial, the witness in speaking of the plaintiff alluded to him at times as his father-in-law, and again as his brother-in-law. Judge Willard, who was particular that a jury should thoroughly understand everything in the nature of evidence, interrupted Dillingham and asked him to explain the apparent discrepancy. “You see,” replied the witness, coolly, “Deuel had a daughter, and, in the order of nature and events, I courted and married her. That made him my father-in-law. Next, you see, as he was a widower and I had an old maid sister, they joined forces and got married. That made him my brother-in-law, and you must excuse me, judge, if I do get a little mixed about it.” The explanation convulsed the bar and spectators by the droll manner in which

it was told, and the witness proceeded with his evidence.

TOO WIDE A MARGIN.

At a General Term held in our court house, William Hay and E. H. Rosekrans were the opposing counsel who were to argue a certain case on the calendar. Contrary to the usual custom, Mr. Rosekrans began his argument for the appellant without handing a printed copy of his "points" to Judge Hay. The latter touched the former's elbow and whispered, "Rosey where's your points?" Getting no "points" or reply, he again said, "Mr. Rosekrans haven't you forgotten to give me your points?" Still no reply. "Rosey *where* are your points," again urged the pertinacious Hay in a loud whisper. "They are *here*, sir, Judge Hay," responded Rosekrans in a melodramatic tone, pointing to his forehead. "The margin is a d—d sight wider than the law requires," retorted Judge Hay in a deep undertone.

HOMŒOPATHIC BRAINS.

Rufus W. Peckham, the younger of Albany, who occasionally visits our court room, is noted for the earnest manner in which he talks *through* a jury. Some of his similes and figures border on the verge which separates the sublime from the ridiculous. For instance, in a certain criminal trial in our Court of Sessions two of the most important witnesses against his client were allopathic physi-

cians. The force of their testimony, he felt, must be broken by a rude shock, or his case was hopeless. In his address to the jury he alluded to them as "two conceited young men whom an inscrutable Providence had suffered to torment men before their time with *allopathic* doses of medicine; and, at the same time, had dealt them out *homœopathic* doses of brains."

A LACONIC EPISTLE.

Hon. E. H. Rosekrans, when he sat on the bench, was supremely indifferent as to what might be the feelings of disappointed suitors who came before his court. If they felt aggrieved he was perfectly willing to have them get redress in the courts above, if they could show that he was in error. Perhaps no other judge in our state paid less attention to what might be the result of an appeal. He decided the law as he understood it. To a disappointed suitor who wrote him asking what he was to do now, he returned the following laconic epistle:

"GLEN'S FALLS ——— —, 186-.

Dear Sir:—Your note received. You have two remedies. First, an appeal; which is an expensive undertaking. Second, d—n the judge; which costs but little and gives immediate relief.

Yours, &c.

ROSEKRANS."

JUDGE HAY AND THE DAM SUIT.

Allusion has been made in these pages to the great Fort Miller state dam case and the part taken therein by Judge Hay. No man enjoyed a joke or

a pun better than he, and his practice was brilliantly illustrated by his efforts in the humorous vein. But it annoyed him greatly to have a wrong construction placed on his language. On the occasion alluded to, he began his closing address with these words : " May it please the court, and you, gentlemen of the jury ; I congratulate you that after days of patient toil this *dam* suit is about concluded." The chance adjective, properly used in this connection, was taken in the profane acceptance by the bar, and the result was that Judge Hay was so confused that it was some moments before he could gather the threads of his argument.

JUSTICE JAMES AND THE IRISHMAN.

Among the judges of this district who have presided in our courts none will be remembered with a higher feeling of respect and reverence than Hon. A. B. James of Ogdensburgh. At one of his terms, held shortly after his accession to the bench, a son of the Emerald Isle was arraigned before him charged with selling ardent spirits contrary to the " prohibition " statute of 1855. He plead guilty ; and, in response to the question of " what do you have to say why the sentence of the law should not be pronounced upon you," replied : " Yer Honor, I intinded to obey the law. Whin it wint into effect I had jist a half barrel of whiskey in my sthore. I wheeled it behint the cellar door, and jist lift it there. And, ye see, yer Honor, when my frinds came in of avenin' to have a bit of a talk,

they'd jist help themselves unbeknownst to me, and thin lave their money on the counter. 'Thin I put the money in the drawer yer Honor, for yer Honor wouldn't have me waste it, I know ye wouldn't." "I see Michael" said Judge James, "you stand sorely in need of protection from your friends, or they will ruin you. I will 'order that you be kept in the county jail for two months, and the sheriff will see that they do not plague you there. When you get out if they do not keep away from you just come and tell me, when I come here again, and I will see that they let you alone for one year."

MORRIS ENGLISH ON THE CIDER QUESTION.

At another term, one Timothy Crowley had been complained of for selling liquor without license at East Line. One of his steady customers was the late Morris English of Ballston. The latter was summoned before the grand jury to furnish evidence against his friend Crowley. It went against the grain, however, and he refused to tell whether he had ever drank any whiskey, etc., in Crowley's place. The district attorney sent him before Judge Potter, to be dealt with for contumacy. "Certainly a man of your apparent intelligence, Mr. English," said the judge gravely, "ought to be able to tell whether he ever drank any rum, whiskey, gin or spirits in a certain place." "Howld a bit} yer Honor," replied Morris, with a twinkle of his black eyes, "ef yer Honor and meself were to squaze the

juice of a peck of apples into a pitcher, I would know thin we had cider. But, if yer Honor squazed thim by yerself, how the divil would I be knowin' what ye had put into the pitcher." This attempt to convince the court that the average toper could not tell the nature of his potations cost Morris his personal liberty for two days, while confined on an order for contempt of court.

TAYLER LEWIS' LOVE FOR HIS OLD SCHOOL HOME.

Allusion was made in chapter 12, to the fact that Prof. Tayler Lewis of Union college, was in his early manhood an active member of our county bar. He was a son of Captain Samuel Lewis, a revolutionary veteran, who settled in the town of Northumberland. He was named in honor of Gov. John Tayler, and is very strenuous that the right orthography of his Christian name should be used. The following beautiful trait of him was told the author by one of the venerable professor's warmest friends. He makes it a matter of duty to visit Fort Miller once a year, and to carry with him a copy of the old spelling book from which he learned to read. Said he to this friend: "I go over to the site of the old school house and sit down where the front seat used to be placed. I then open my spelling book and get up and commence to read: 'No-man-may-put-off-the-law-of-God.' " It is this reverence for the early associations of youth that has preserved the cheerful temper of the veteran scholar while suffering from the almost total loss of hear-

ing, but which deprivation has not impaired his usefulness as an instructor or author. While seasons roll with continued sunrise and sunset, Christians will bless the name of the author of the "Six days of the Creation," as that of the scholar who interposed an impassable barrier to the inroads of infidel materialistics on the authenticity and consistency of the Mosaic cosmogony. He is a brother of the late Gen. Samuel Lewis of Northumberland, who was better known to the citizens of this county than the distinguished professor, by reason of his long and useful citizenship in our midst.

A DEFENDANT'S OPINION OF JUDGE CADY.

The last Circuit held by Daniel Cady in our county was that of February, 1854. He was then upwards of eighty years of age. Among the suits tried at that term was that brought by Ezekiel C. Little against Samuel A. House and Alexander C. Morrison. The *res gestæ* of this action was somewhat similar to that of Fullerton against Viall *et al.*, *ante.*, and was brought by Little, as a judgment creditor of the defunct foundry firm of Viall, House & Mann of Mechanicville, to set aside, as fraudulent, a mortgage given by House to his brother-in-law, Morrison, on his residence and real estate in Mechanicville. The mortgage claim as testified by Morrison arose from the sale of fast horses and other flash property by him to House, and the mortgage was given as security for payment. The testimony was overwhelming in show-

ing the fraudulent nature of the mortgage, and that it was given to attempt to secure the property from the creditors of the firm. Judge Cady was very severe upon House and Morrison in his charge to the jury. As he was dealing out in unstinted terms his cool, logical deductions drawn from the testimony, Morrison beckoned to his counsel, Hon. A. B. Olin, to come out in the corridor. As the latter joined him, Morrison asked in a loud whisper: "Don't you think the o'd judge has outlived his usefulness?" The jury thought otherwise, and Gen. Bullard had the satisfaction of recovering a portion of his clients money from House's estate.

A FRAUD IN LAW IS A FRAUD IN FACT.

Until a recent decision of our Court of Appeals it was a mooted question both in English and American courts whether a fraud in law would vitiate a sale the same as a fraud in fact. The case in question being unparalleled on either side of the water in the annals of Anglo-Saxon jurisprudence, it deserves notice in the history of the bench and bar whence it emanated. In 1850, Calvin Dake of Fort Edward was indebted to Wilson & Grimwood, merchants, of Albany, to an amount exceeding \$600, and was then insolvent. To secure their payment, he procured his brother, Ansel Durkee, to assign a mortgage of \$600 which the latter held on his property. Ansel had no other property, and was a judgment debtor of Conrad Cramer of Northumberland in the sum of \$58. Under proceedings supplementary to

execution, William T. Seymour was appointed receiver of Ansel's estate, and he demanded that Wilson & Grimwood should pay the amount of Cramer's debt from the proceeds of the mortgage; which they refused to do. Seymour then brought suit in the Supreme Court to recover. It was referred to and tried before Hon. George G. Scott, who gave judgment for the plaintiff; holding that a transfer by a party of *all* his property, leaving his just debts unpaid, was a fraud in law, even if the assignor did not actually intend to commit a fraud in fact. On a motion at General Term for a new trial, on the first argument the court was equally divided. It was again argued when Judge Willard was absent, and Judges Hand and Cady (Hand writing the opinion) decided against the plaintiff on the merits, holding that a receiver could not attack a transfer for fraud. This opinion may be found in 16 *Barbour*. The case was retried before Judge Scott and, in the meantime the Court of Appeals having held that a receiver could attack a transfer for fraud, he again found for the plaintiff. This judgment was affirmed at General Term, but the Court of Appeals sent it back for a new trial. Judge Mitchell wrote an opinion which concurred with that of Justice Hand. It was then referred to Chancellor Walworth and tried before him. Under the opinion of Judge Mitchell (supposing it was that of a majority of the court) he found against the plaintiff, but stated it to be against his own judgment. It was now the plaintiff's turn to appeal, and the General

Term sided against him. About this time the opinion of the majority of the Court of Appeals was published. (See 4 *Kernan* 567.) It was written by Judge Denio. It now appeared that the court had granted a new trial not on the merits, but because a certain question was excluded. On the second argument before the Court of Appeals, that tribunal decided the merits in favor of the plaintiff and settled the law that a transfer may be fraudulent in law, even if no wrong is intended. (See 19 *New York* 417.) The case was now tried the fourth time before Judge Bockes, who gave judgment for the plaintiff. The defendants then took the case again to the General Term and Court of Appeals on purely technical grounds, and final judgment was awarded to the plaintiff. It thus had four trials in the lower court, five arguments at General Term and three hearings in the Court of Appeals. The defendants were represented at first by Halsey R. Wing of Glen's Falls, then by Judge Rosekrans, next by Nicholas Hill, jr., and finally by William L. Learned of Albany, now presiding justice of the third department. General Bullard managed the plaintiff's case throughout. It was a great triumph for him. Indeed, a prominent jurist said: "Bullard has settled more points of law than any other man at the bar of this state." It will be remembered that the amount involved in the action was \$58. The taxable costs, alone, which the defendant paid, amounted to \$1,200. The total expenses of both parties must have exceeded \$2,500.

WHERE DID THE WITNESS GO TO?

At one of the Circuits held since the adoption of the constitution of 1846, in one of the numerous actions where the *locus in quo* of a boundary line was the difficult kernel to extract from the legal nut, the plaintiff was called as a witness in his own behalf, and near the close of his testimony the following colloquy occurred :

Counsel for plaintiff—"Did you notify the defendant of the day when the survey was to be made?"

Witness—"Yes."

Counsel for plaintiff—"What did he say in reply?"

Witness—"He told me to go to the d——l."

Judge (interrupting)—"Did you go?"

Witness—"I am here, your Honor."

Judge (sharply)—"Call the next witness."

MITCHELL SANFORD'S POETIC FIGURE OF SPEECH.

The suit of Abba M. Stewart against the Saratoga & Washington railroad company which was tried at the May Circuit, 1857, before Justice Rosekrans attracted much attention at the time. The plaintiff, a daughter of Gen. John Stewart of Waterford, was injured seriously by an accident on the defendant's road, near Ganzevoort. She was noted for her great personal beauty previous to the accident, and was married to Mr. Benjamin C. Brown before the trial of the action. The plaintiff's attorneys were I. C. Ormsby and Gen. Bul-

lard, with Hon. John Cramer of Waterford, and Mitchell Sanford of Hudson, associated with them. Charles S. Lester, William A. Beach and Judge John Willard appeared for the railroad. Sanford's address to the jury carried them completely with him. Allowing to the plaintiff before the accident he indulged in the following flight: "Man never chiseled in marble such a perfect form as God Almighty made in hers." The jury reduced this poetic thought to the rude prose of a verdict for the plaintiff for \$4,000 and costs of the action.

VARNEY'S DOG SUIT.

In an action brought by a plaintiff to recover the value of a dog alleged to have been poisoned by the defendant, Counselor Lewis Varney submitted the following points on a motion for a nonsuit, after the plaintiff's evidence had been received: "First, it appears that the plaintiff had given the dog away and was not its owner, and therefore is not entitled to recover. Second, the value of the property has not been proved. Third, no *post mortem* was held, and there was no proof that the animal was poisoned. Fourth, it is not shown that the dog tax had been paid in obedience to the statute of 1862, known as Judge Corey's dog law." Without awaiting an opinion of the court as to the merits of the third point, his opponent deemed the others fatal and withdrew his action.

JUDGE THOMPSON AND THE VETERANS.

At the August term of Common Pleas in 1832, over a hundred veterans of the revolution, "venerable relics handed down to us from a former generation," residents of this county gathered to procure the certificates of identity from the court which would entitle them to the reward for their patriotic services of half a century before. Naturally, the the aged veterans, halt, lame and decrepid, either from honorable wounds or the palsyng hand of Time, were somewhat talkative as they met their old comrades, and the din of their voices as they clustered in front of the clerk's desk, each anxious to be the first to procure his "papers," was such as to completely stop the proceedings of the court. At this moment Judge James Thompson thus addressed them from the bench :

Gentlemen, you are here claiming to have been soldiers, and to have performed military service in the revolutionary war. Men who have been good soldiers retain the military habits acquired in the field to the end of their lives. Your evident lack of discipline manifested here furnishes strong evidence to the court that there are imposters in your band. The court will hint to you that if you wish to be received with favor, you must exhibit tokens of soldierly discipline. Right about face! Forward, *March!*

The effect was electrical. The veterans executed the manoeuvre as one man, marched to seats, saluted the bench and sat down ; giving the highest evidence that they were, indeed, the war-worn and thoroughly disciplined soldiers who had encountered defeat, suffered in camps and finally triumphed under the starry ensign of their country's liberty.

BIRTHPLACE OF HON. JOHN CRAMER.

Half a century ago one of the most energetic citizens, leading lawyers and promising public men of this county was Hon. John Cramer of Waterford. The author is indebted to Gen. Bullard for the following incident attending Mr. Cramer's first appearance on the stage of life, which is probably new to most of my readers and is of sufficient interest to be here related. His father, Conrad Cramer, was one of the first settlers in the Saratoga patent, living about three miles south west of the mouth of Fish creek. In May, 1779, on the approach of the band led by Thomas Lovelace, (on the raid in which he was captured and hung, December 14, ensuing,) Mr. Cramer packed his family and movables in a wagon and started for Halfmoon point. They reached Simon's tavern (which stood near the river a few rods north of the present line dividing Saratoga from Stillwater, near Wilbur's basin) where the excitement overcome his wife and prematurely brought on the pangs of child birth. The little hotel was crowded with refugees, and the Cramer family could not obtain admittance. At this place and under these circumstances on the 17th of that May, the infant, who subsequently became Hon. John Cramer, state senator and representative in congress, was born. So frail, apparently, was his hold on life that it was thought to be impossible to induce respiration. He weighed less than four pounds, but a maiden aunt determined to save the little waif thus cast upon the sea of time—and suc-

ceeded. He lived, a tall, broad chested vigorous man, far beyond the Psalmist's limit to the dawn of the centennial of that liberty with whose birth his was so strangely contemporaneous, and died at his residence in the village of Waterford, June 1, 1870, in the 92d year of his age. He graduated at Union college in 1801, in the fifth class of that honored institution of learning. He was member of assembly in 1806, 1811 and 1842; state senator in 1823-4-5; member of the constitutional convention of 1821, representative in congress from 1833 to 1837, and was appointed a master in chancery in 1805. The tory Lovelace was a descendant of the colonial governor, Lord Lovelace, who succeeded Lord Cornbury, December 18, 1708.

ANECDOTE OF HON. HENRY SMITH.

Ex-speaker Henry Smith of Albany is an attorney and counselor who frequently appears in our courts. Being gifted with the faculty of giving and taking a joke, quick at repartee, and eloquent withal, his appearance in a trial in our court room is the signal for a large audience to assemble. The following anecdote, in which he bears a conspicuous part, has found it way into print. At an Albany Circuit in 1870, he and Hon. Lyman Tremain were opposing counsel in a breach of promise case. The plaintiff was a beautiful young lady of delicate organization, and when she came to be cross examined by Mr. Smith she quailed and finally fell from her seat in a swoon. The sympathies of all the spec-

tators, jury included, were at once enlisted in her behalf, and Mr. Smith saw that he must do something to stem the tide. So when the next witness (a calm appearing, motherly old lady) was turned to him for cross examination by Mr. Tremain, he said: "Madam, you saw the plaintiff faint awhile ago?" "Yes, sir." "You saw her face that it didn't turn pale?" "Yes, sir." "Well, people turn pale when they faint, don't they?" "No, not always." "Did you ever hear of a case of fainting where the party did not turn pale?" "Yes, sir." "Did you ever see such a case?" "Yes, sir." "When, and where?" "In this city." "Who was it?" demanded Mr. Smith. "It was a negro," coolly responded the witness. The plaintiff won the case, it is probably needless to add. Equally fatal to his case was another desperate attempt that he made in trying an indictment in this county, a few years since. Two of the principal witnesses for the opposite side were a butcher and a life insurance agent. To break the force of their testimony he labored long and strenuously. He said that the bloody occupation of a butcher frequently so hardened his feelings and obliterated the tender sentiments from his mind that he became callous and unable to discern properly between right and wrong. As to the insurance agent, who in his testimony acknowledged that he had followed all the occupations which the poet Joel Barlow said the Yankee would do to achieve wealth at forty, except preaching and tin peddling, he was particularly severe,

closing with this declaration: "When a man has followed every occupation that ingenuity has devised to avoid mental and manual labor, and failed to secure a livelihood, he is just fitted for a life insurance agent." People who have had their patience drilled to the Laurentian formation by these adhesive agents will heartily agree with him. But his allusions were unfortunately ill timed, for there were *two* agents sitting on the bench, and *three* butchers in the jury box. The natural result was a disagreement. Whether the jury stood nine to three is a secret, but if a jury was ever excusable for disagreeing that was the one.

A SECRET EXPOSED.

For several years there has been a chronic charge that the constables sworn to attend juries in their deliberations were "leaky vessels;" because the secret of how the jury stood on different ballots, if they remained out an unusual length of time, was sure to be known to the public. But the charge was illfounded. The court house itself is the tell-tale. Last spring, when the jury in the Dr. T. E. Allen matter went to their room, the author was engaged in the law library room adjoining. Soon voices were heard through the stovepipe hole in the partition wall, and the result of that trial was known to those in the library twenty two hours before it was officially announced by the foreman of the jury, A. P. Blood, to the court. The secret, hitherto known only to a few, was thus explained

and the credit of the constabulary force remains unimpeached.

MAXWELL'S COLORED JURY.

The first, and so far as known, the only jury composed solely of colored men ever impaneled in the state was sworn by a member of our county bar, acting in the capacity of a justice of the peace of the town of Milton, long before the fifteenth amendment was thought of, or Chief Justice Taney had, erroneously, been charged with holding that "negroes have no rights which white men are bound to respect." About thirty years ago, Sarah Gunday, an aged colored crone living at the county seat, declared on oath before Justice Maxwell that "Sure to gracious," Roxana Williams, a frail Ethiopian damsel, "had done gone and stolen her shawl." A warrant for the arrest of the light fingered Roxana was issued and given to John B. McLean, the present deputy county clerk, but then a constable, to serve. The culprit was arrested and arraigned. Her counsel demanded a trial by her peers. A *venire* was issued and McLean started for the "peers." He found them in the persons of Peter Wentworth, Charles Johnson, John M. Nelson, Austin White and eight other "sunburnt" citizens. With them he appeared at the justice's door, and, it being a hot day in July, the latter instantly adjourned court to Ford's grove, in the east part of the village. The court was duly organized, the justice sitting on a stump and the "chosen

six, big with destiny," on a fallen tree. The evidence was taken, the counsel summed the matter, and the court delivered a most lucid charge. The constable was sworn and retired with his dusky charge to a secluded part of the grove. Soon he was seen returning, followed in Indian file by the jury. To the usual question Peter Wentworth, the foreman, drew up his tall form, adjusted his "specs" and responded: "We find the prisoner not guilty, but Roxana must return Aunt Sarah's shawl."

LEGAL CHIROGRAPHY.

Most gentlemen who are invested with the degree of attorney and counselor soon afterwards attain the art of executing specimens of chirography which are peculiar to their learned profession. Whether it is a following of a custom "to the contrary of which the mind of man runneth not;" or, whether they seek to write a hand combining all the flowing outlines of the ancient Hebrew, the acute angles of the "heathen Chinees" and the uncertain twists of the modern Arabic is a mystery as deep as the Sphinx. Certain it is that with few exceptions no class of persons are guilty of causing so many infractions of the third commandment on the part of printers as the legal fraternity, unless it be the reverend clergy, whose illegible tangles prove quite often a cypher to which, like the Mexican hieroglyphics, no key of interpretation can be found. A well known son of this county, who has

achieved high fame at the bar, says that he writes three hands: "One that anyone can read, by studying it; another that he can read himself, after deep deliberation; and a third that the d—l cannot read." The author once saw him at a Circuit hand up to Judge Theodore Miller, who was presiding, his minutes of evidence with a request that his Honor would decipher them at his leisure and consider them as a part of his argument on the mooted point. The butt of the joke lay in the fact that Judge Millis is allowed all around to be the champion "crooked" chirographer of the bench and bar of the whole state.

It used to be related of Judge George Palmer of Stillwater that he once wrote a sharp dunning letter for a client to a slow debtor. He received it and was unable to translate it, or even to tell its origin. Going to Stillwater, a few days later, he took the "puzzle" along, thinking that probably Judge Palmer could explain the riddle. The latter undertook the task and after wrestling with the "pot-hooks" a moment said: "It's of no use, all the fiends in Hades could not read that," and impatiently turned over the page, where his own bold signature, "Geo. Palmer," confronted him. All at once it was clear as noonday, and the poor debtor regretted that he had not left the mystery unsolved.

Similar to this is the story told of the gentleman who at present the senior member of our bar. He handles a quill in even a more careless manner than did the late Horace Greeley. At one time, but a

few years since, he thought he would enjoy a vacation shooting prairie chickens with his brother in Illinois. So he mailed a letter signifying his intentions, and after the superscription had been fully "cussed and discussed," along the route by the mail agents and post clerks it finally came to its destination; and, after traveling through the neighborhood it finally came to its owner, who recognized the superscription on the envelope but totally collapsed under the pressure of attempting to read the contents. The results of his unavailing labors were thus summed up in a letter sent to his legal brother in response:

Your letter looked as if it were written upside down. I turned it over and it looked more so. I showed it to our school master, but his learning was not deep enough to fathom your hieroglyphics. I laid it carefully away until my next visit to Peoria. I took it there and submitted it to a famous linguist, who is versed in many tongues. He gave it a most careful examination and decided that it was not written in any known language, living or dead. I re-mail it to you and wish you would send me a translation, but, John, I would advise you to go to school and learn to write."

Now came the most difficult part. Our friend had given up the hunting trip and had forgotten the letter, and when it arrived he was unable to read it himself. And yet, with all the pains he had taken these many years to attain an exalted position as a writer of illegible manuscript, if he should contest for a premium in that art there are several members of our county bar who could easily distance him and secure the medal.

CHAPTER XXIII.

THE SARATOGA COUNTY BAR.—CONCLUSION.

The following gentlemen now residing in this county, who have been duly admitted to “practice in all the courts of this state,” comprise its bar as at present constituted. Some of them are not in practice, and are engaged in other professions or avocations :

BALLSTON SPA.

George G. Scott.	John Brotherson.	John W. Thompson.
Neil Gilmour.	James W. Verbeck.	Jesse S. L'Amoreaux.
Geo. W. Chapman.	Seth Whalen.	N. Jewett Johnson.
Alvah C. Dake.	William J. Hillis.	Edwin Quackenbush.
George W. Hall.	Theo. F. Hamilton.	Enos R. Mann.

CRESCENT.

Truman G. Younglove.

CORINTH.

David Maxwell.

GALWAY

Patrick Henry Meehan.

MECHANICVILLE.

James F. Terry.

SARATOGA SPRINGS.

Augustus Bockes.	Oliver L. Barbour.	Charles S. Hester.
Edward F. Bullard.	John C. Hulbert.	Nathaniel B. Sylvester
John W. Crane.	William A. Sackett.	George S. Batcheller.
John R. Putnam.	Alembert Pond.	Lewis Varney.

Lemuel B. Pike.	John Newland.	Winsor B. French.
Silas P. Briggs.	John M. Davison.	Patrick Henry Cowen.
Henry W. Merrill.	John W. Martin.	James M. Andrews.
Joseph W. Hill.	John A. Bryan.	William M. Searing.
John T. Carr.	Aaron B. Olmstead.	Phineas F. Allen.
William C. Barrett.	James P. Butler.	Algernon S. Burdick.
Joseph D. Briggs.	James S. B. Scott	Charles C. Lester.
John Foley.	John L. Barbour.	William H. Eustia.
John Van Rensselaer.	Elisha H. Peters.	John H. Benedict.
Chas. H. Tefft, jr.	Jesse Stiles.	William B. H. Bunce.
William L. Grahame.	Sidney J. Cowen.	James M. Andrews, jr.
John R. McGregor.	Frank B. Benton.	Charles M. Davison.
Edgar T. Brackett.	George H. Mosher.	

SCHUYLERVILLE.

Delcour S. Potter.	Samuel Wells.	Philander C. Ford.
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STILLWATER.

Lawrence Vandemark.

WATERFORD.

Cornelius A. Waldron.	Isaac C. Ormsby.	Francis S. Waldron.
Geo. B. Lawrence.	Gad H. Lee.	William T. Seymour.*

Of natives of this county and others, who have resided here for a time, who have in the practice of the profession of the law gained honor and fame for themselves elsewhere, may be named the late venerable Gideon Hawley of Albany, a native of Charlton; Judge Philo D. Woodruff of Columbus, Ga.; Judge Nathaniel Bacon of Niles, Michigan, a native of Ballston; Judge Francis N. Mann of Troy, a native of Milton; Judge Samuel Belding of Ams-

*Since the completion of this work and while it was in press, the name of a member of the bar of this county, Charles Cramer of Waterford, has been stricken from its roll by the Great Judge. Mr. Cramer was a son of the Hon. John Cramer, and was a man of sterling personal qualities that endeared him to his circle of friends. he was liberally educated and trained for the bar, but devoted his life more to literary than forensic work.

terdam, a native of Charlton; Levi Hubbell of Milwaukee, Wis.; William B. Harris of Albany; James W. Culver of Jersey City; Edgar L. Fursman, John C. Greene and Esek Cowen of Troy; John L. Hill of Brooklyn; Miles B. Castle and Frederick Mosher of Sandwich, Illinois; William McKindley, William M. King and William K. Sturgess of Chicago; Pliny W. Bartholomew of Indianapolis; Waldo M. Potter (formerly of the *Saratogian*) of Cedar Rapids, Iowa; Charles A. Davison. Judge Gilbert M. Spier, Joseph A. Shoudy and John R. Fellows of New York; Flamen Ball of Cincinnati; John A. DeRemer of Schenectady, and others whose names escape me, it may be said that Saratoga continues to cherish them as her absent sons, and over the graves of those who have fallen asleep she folds the pall and enshrines their fame in her memory.

A mention needs be made of the "State and National Law School" established by John W. Fowler, a bright but erratic son of genius, in the old Sans Souci hotel, Ballston Spa, in 1849. He opened it with a full corps of competent professors and secured an abundant patronage. Among the graduates may be mentioned the names of Col. Slocum of the 1st Rhode Island infantry, who fell at the head of his regiment fighting at Bull Run; Governor Gilbert C. Walker of Virginia, Judge Abraham R. Lawrence, Surrogate Delano C. Calvin and Gen. Roger A. Pryor of New York, and ex-judge Samuel D. Morris of Brooklyn—an *alumni*

that would reflect honor on any institution. At the commencement in 1850, there were present Ex-President Van Buren, Governor Hamilton Fish and the great Kentucky commoner, Henry Clay. The latter made a memorable address to the students, addressing through them for the last time the young men of America in words of earnest counsel to be true to themselves and their country. But the projector of this law school, to balance all his other attainments, lacked what Gen. McCook called a "level head." He was very improvident, knowing nothing of the financial problems conducive to success, and, after three years of active and useful life, the institution went into bankruptcy.

Mention was made in the life sketch of Thomas Palmer of the building of the first county clerk's office. The supervisors in 1865, resolved to build the present edifice in the court house grounds; the former having become unsafe and inadequate, as well as too remote from the court room. They appointed Arnold Harris, Joseph Baucus, David T. Lamb, James W. Horton, Edwin H. Chapman, Charles S. Lester and William V. Clark a committee to erect the new building at a cost of 10,000. It was completed and occupied in the summer of 1866; Mr. Horton having previously removed the records to the state armory, now Christ church chapel, on High street.

Allusion has been made to the four pillars of the bar circle. They were placed in position to sustain the roof of the building. But, the "place that once

knew them, will know them no more, forever." In the summer of 1874, the court house committee of the board of supervisors resolved on a general series of repairs. They began by trussing the roof and removing the then useless pillars. The whole building was next treated with an entire new ceiling of mortar and "hard finish," and painted throughout. At first it was resolved to remove the judges' bench to the east end of the room with the bar and jurors' chairs occupying the whole of that part of the room. After one term it was found to be inconvenient, and the old arrangement with improvements was again adopted, and with the exception of the absence of the time worn pillars and a general modern appearance imparted to the room, it again wears its accustomed features.

A high compliment was paid to our county bar in the year 1875. The Khedive of Egypt, imbued with the high and noble idea of restoring to his land the civilization which it enjoyed in the long by-gone centuries, sought the aid of the outside nations. He determined to create courts of law on the European models and established a supreme tribunal ; to which he appointed three of his native counselors, and then asked the governments of the United States, Great Britain and France to each designate a citizen, learned in the law, who would come to the land where Joseph and his brethren dwelt as strangers and accept from him an appointment for five years as a judge of the Egyptian supreme court. Hon. Hamilton Fish, secretary of state, in

accepting this delicate task determined to designate one who would be an honor to the American name while he dwelt beneath the shadows of Cheops, from whose summit forty centuries look down upon the changing centers of human civilization. He tendered the appointment to Gen. George S. Batcheller of Saratoga Springs, as to a gentleman who was equally gifted as a lawyer and a statesman, and who as a jurist, under these peculiar circumstances, would be best fitted to perform the duties that would come before him. Gen. Batcheller, after some hesitation and by the advice of his friends, decided to accept the task of carrying the science of modern jurisprudence to the land of the Pharoahs and Ptolemys from the land to them unknown, unless it be the "lost Atlantis," spoken of in the fragments of Herodotus as the land to which the Phoenician caravajals sailed and planted colonies. He is now living at Cairo, and both American and European tourists speak in high terms of the American judge and the hospitality of his amiable family; while from the Egyptian journals come fine encomiums of the work performed by the jurist from the Western World.

And now a word in conclusion. This has been on the part of the author a labor of love. The material embraced in this work partly matter of record and partly traditions gathered from the memories of old residents of the county was lying uncollected and the latter, especially, was fast going to the shades of oblivion, as successively the

possessors of this knowledge were called to their final homes. For several years he has devoted a good share of his leisure time to conversing with these elderly parties and jotting down their recollections of the men and times in which they lived. As a son of Saratoga proud of her honored name, and as a duty which he felt he owed to the profession to which he was trained, he determined to publish this record of its "Bench and Bar." And what better time could be decided upon for such publication than the centennial year of our national liberties when the public mind is intuitively turned backward to the days of the fathers. As a contribution to the centennial literature of the country these reminiscences are offered.

APPENDIX.

CIVIL REGISTER—1791–1876.

FIRST JUDGES OF COMMON PLEAS.

- 1791—John Thompson, Stillwater.
- 1809—Salmon Child, Greenfield.
- 1818—James Thompson, Milton.
- 1833—Samuel Young, Ballston.
- 1838—Thomas J. Marvin, Saratoga Springs.

JUDGES OF COMMON PLEAS.

- 1791—James Gordon, Ballston; Jacobus Van Schoonhoven, Waterford; Beriah Palmer, Ballston; Sidney Berry, Saratoga.
- 1793—Adam Comstock, Greenfield.
- 1794—Epenetus White, Ballston.
- 1803—Samuel Clark, Malta.
- 1806—John Taylor, Charlton; John McClelland, Galway.
- 1809—John Stearns, Halfmoon; Nathaniel Ketchum, Stillwater.
- 1811—William Stilwell, Ballston; Samuel Drake, Halfmoon.
- 1812—Benjamin Cowles, Hadley.
- 1813—Ashbel Andrews, Malta; William Patrick, jr. Stillwater; Elisha Powell, Milton; Ziba Taylor, Saratoga; John M. Berry, Moreau; Abner Carpenter, Ballston; Abraham Moe, Halfmoon.
- 1815—Thomas Laing, Northumberland; Avery Starkweather, Galway.
- 1817—Thomas Dibble, Milton; Herman Ganzevoort, Northumberland.
- 1818—Salmon Child, Greenfield; Abraham Moe, Halfmoon; James McCrea, Ballston; John Prior, Greenfield.
- 1820—Samuel Cook, Milton; James Van Schoonhoven, Waterf'd.
- 1821—Harvey Granger Saratoga.
- 1823—Guert Van Schoonhoven, Waterford; John H. Steel, Saratoga Springs.
- 1826—Nicholas B. Doe, Waterford.
- 1829—George Palmer, Stillwater.
- 1836—Thomas J. Marvin Saratoga Springs.

1838—George G. Scott, Ballston ; John Gilchrist, Charlton.

1841—Seymour St. John, Greenfield.

1843—Lewis Stone, Galway.

1845—William L. F. Warren, Saratoga Springs.

1846—Joshua Mandeville, Waterford.

[NOTE.—Prior to 1818, the number of judges was unlimited by statute.]

COUNTY JUDGES.

1847—Augustus Bockes, Saratoga Springs.

1854—John A. Corey, Saratoga Springs.

1855—James B. McKean, Saratoga Springs.

1859—John W. Crane, Saratoga Springs.

1863—John C. Hulbert, Saratoga Springs.

1870—Charles S. Lester, Saratoga Springs.

JUSTICES OF THE PEACE FOR SESSIONS.

1847—Abel A. Kellogg, Sar. Spgs.; Wm. T. Seymour, Waterford.

1848—Abel A. Kellogg, Sar. Spgs.; Wm. T. Seymour, Waterford.

1849—Abel A. Kellogg, Sar. Spgs.; Wm. T. Seymour, Waterford.

1850—David W. Wait, Halfmoon ; David Maxwell, Milton.

1851—David W. Wait, Halfmoon ; Thomas G. Young, Ballston.

1852—David W. Wait, Halfmoon ; John Gifford, Greenfield.

1853—William Wilson, Milton ; Samuel B. Edwards, Ballston.

1854—Abraham Sickler, Halfmoon ; David Maxwell, Milton.

1855—David Lyon, Corinth ; Cornelius A. Waldron, Waterford.

1856—Augustus E. Brown, Milton ; Alex. Hannay, Stillwater.

1857—Augustus E. Brown, Milton ; Obadiah Green, Wilton.

1858—Tilley Houghton, Corinth ; David Maxwell, Milton.

1860—George D. Angle, Wilton ; Seneca Denel, Providence.

1861—David Maxwell, Milton ; Seneca Denel, Providence.

1862—Jacob Boyce, Wilton ; Reuben H. Barber, Stillwater.

1863—David Maxwell, Milton ; Adam Mott, Clifton Park.

1864—Malcolm McNaughton, Saratoga ; Tilley Houghton, Corinth.

1865—William D. Marvin, Malta ; Adam Mott, Clifton Park.

1866—Abraham Marshall, Northumberland ; Malcolm McNaughton, Saratoga.

1867—Abraham Marshall, Northumberland ; William Warner, Ballston.

1868—David Maxwell, Milton ; Adam Mott, Clifton Park.

1869—Samuel Wells, Saratoga ; Geo. Washburne, Northumb'd.

1870—Geo. Washburne, Northumberland ; Charles E. Gorseline, Halfmoon.

1871—Charles E. Gorseline, Halfmoon ; George Washburne, Northumberland.

1872—H. Ransom Colson, Edinburgh ; John F. Pruyn, Waterf'd.

1873—John F. Pruyn, Waterford ; Samuel Lewis, Northumb'd.

1874—Samuel Lewis, Northumberland; Melbourne Van Voorhees, Halfmoon.

1875—Melbourne Van Voorhees, Halfmoon; Phineas F. Allen, Saratoga Springs.

1876—John Brown, Ballston; John Peck, Clifton Park.

MASTERS IN CHANCERY.

1801—Samuel Cook, Ballston.

1805—John Cramer, Halfmoon.

1806—William Carpenter, Providence; Thomas Lee, jr. Hadley.

1807—Daniel G. Guernaey, Halfmoon; George Palmer, jr. Stillwater; Thomas Laing, Northumberland; Eli Smith, Galway; Herman Ganzevoort, Northumberland; Thomas Palmer, Milton.

1810—Ely Beecher, Edinburgh.

1811—Elijah W. Abbott, Saratoga.

1813—Nathan S. Hollister, Charlton; Aaron Blake, Saratoga; Epenetus White, jr. Ballston; Joabua Mandeville, Halfmoon; John Gibson, Ballston; Othniel Allen, Providence; Thaddeus Jewett, Galway.

1814—Henry Metcalf, Stillwater; John Metcalf, Northumberland; James Scott, Ballston; Luther Hulbert, Malta.

1815—Esek Cowen, Saratoga; Samuel S. Barker, Providence; Solomon D. Hollister, Ballston; John Pettit, Greenfield; Benjamin Cowles, Hadley.

1816—William Laing, Northumberland; Nicholas W. Angle, Moreau.

1817—William B. Van Benthuisen, Saratoga; Bushnell Benedict, Ballston; Robert Sumner, Edinburgh; William Comstock, Northumberland.

1823—William Given, Waterford; Thomas Palmer, Milton.

1824—Wm. L. F. Warren, Saratoga Springs.

1831—George W. Kirtland, Waterford.

1832—Judiah Ellsworth, Saratoga Springs.

1834—Oran G. Otis, Milton.

1836—John A. Corey, Saratoga Springs.

1840—John K. Porter, Waterford; Archibald Smith, Charlton; James M. Andrews, Saratoga Springs.

1841—Perry G. Ellsworth, Saratoga Springs.

1843—Calender Beecher, Milton.

1844—Edward F. Bullard, Waterford; Daniel Shepherd, Saratoga Springs.

1846—William Avery, Saratoga Springs.

EXAMINERS IN CHANCERY.

1821—Harvey F. Leavitt, Saratoga Springs.

1823—Samuel Cook, Milton.

1824—Alpheus Goodrich, Milton; Geo. W. Kirtland, Waterford.

1828—Judiah Ellsworth, Saratoga Springs.

- 1834—Nicholas Hill, jr. Saratoga Springs.
1835—Oran G. Otis, Milton.
1837—Sidney J. Cowen, Saratoga Springs.
1840—James M. Andrews, Saratoga Springs; Nicholas B. Doe, Waterford; Archibald Smith, Charlton.
1841—John K. Porter, Waterford; Perry G. Ellsworth, Saratoga Springs.
1843—Thomas G. Young, Ballston.
1844—Daniel Shepherd, Saratoga Springs; Edward F. Bullard, Waterford.
1846—William L. Avery, Saratoga Springs.

SURROGATES.

- 1791—Sidney Berry, Waterford.
1794—Henry Walton, Ballston.
1808—Beriah Palmer, Ballston.
1812—Thomas Palmer, Milton.
1814—Daniel G. Guernsey, Halfmoon.
1815—Thomas Palmer, Milton.
1816—George Palmer, Stillwater.
1834—John W. Thompson, Milton.
1847—John C. Hulbert, Saratoga Springs.
1856—Cornelius A. Waldron, Waterford (now in office).

COUNTY CLERKS.

- 1791—Dirck Swart, Stillwater.
1804—Seth C. Baldwin, Ballston.
1813—Levi H. Palmer, Milton.
1815—William Stillwel, Ballston.
1818—Thomas Palmer, Milton.
1833—Alphens Goodrich, Milton.
1840—Archibald Smith Charlton.
1843—Horace Goodrich, Milton.
1846—James W. Horton, Ballston (now in office).

DISTRICT ATTORNEYS.

- 1818—Richard M. Livingston, Saratoga.
1821—William L. F. Warren, Saratoga Springs.
1836—Nicholas Hill, jr. Saratoga Springs.
1827—Obesselden Ellis, Waterford.
1843—William A. Beach, Saratoga Springs.
1847—John Lawrence. Waterford.
1851—William T. Odell, Milton.
1857—John O. Mott, Halfmoon.
1860—Charles S. Lester, Saratoga Springs.
1863—Isaac C. Ormsby, Waterford.
1869—Winsor B. French, Saratoga Springs.
1871—Isaac C. Ormsby, Waterford (now in office).

SHERIFFS.

- 1791—Jacob Fort, jr. Halfmoon.
 1794—Douw I. Fonda, Stillwater.
 1799—Henry Davis, Halfmoon.
 1801—Seth C. Baldwin, Ballston.
 1804—Daniel Bull, Saratoga.
 1807—Asahel Porter, Greenfield.
 1808—Daniel Bull, Saratoga.
 1810—Asahel Porter, Greenfield.
 1811—Nathaniel Ketchum, Stillwater.
 1818—Hezekiah Ketchum, Halfmoon.
 1815—James Brisbin, jr. Saratoga.
 1819—John Dunning, Malta.
 1821—John R. Mott, Saratoga.
 1823—John Dunning, Milton.
 1826—Lyman B. Langworthy, Milton.
 1829—John Dunning, Milton.
 1832—John Vernam, Waterford.
 1835—Joseph Jennings, Milton.
 1838—Samuel Freeman, Ballston.
 1841—Robert Speir, Milton.
 1844—Isaac Frink, Milton.
 1847—Thomas Low, Charlton.
 1850—Theodore W. Sanders, Corinth.
 1852—Wm. T. Seymour, Waterford, (vice Sanders, resigned.)
 1853—Henry H. Hathorn, Saratoga Springs.
 1856—Philip H. McOmber, Milton.
 1859—George B. Powell, Milton.
 1862—Henry H. Hathorn, Saratoga Springs.
 1865—Joseph Baucus, Northumberland.
 1868—Tabor B. Reynolds, Wilton.
 1871—Thomas Noxon, Halfmoon.
 1874—Franklin Carpenter, Corinth.

CRIERS.

- 1719—Ezra Buel, Stillwater.
 1833—Nathaniel Stewart, Milton.
 1836—Hiram Boss, Milton.
 1848—Nathaniel J. Seeley, Milton.
 1859—Freeman Thomas, Milton.
 1863—David F. White, Milton.
 1873—Norman S. May, Saratoga Springs.

JAILORS.

- 1796—Enos Gregory; 1798—Joseph Palmer; 1802—Samuel Hollister; 1811—Jonathan Kellogg; 1812—Samuel Hollister; 1813—Raymond Taylor; 1819—John Dunning; 1835—Ches

ter Stebbins; 1841—Thomas Low; 1844—Rowland A. Wright; 1859—Frederick T. Powell; 1874—Manlius Jeffers; 1875—Franklin Carpenter.

EXCISE COMMISSIONERS (ACT OF 1857.)

1857—John Stewart, Waterford, Samuel Lewis, Northumberland Truman Safford, Saratoga Springs.
 1858—Ranson Cook, Saratoga Springs.
 1861—Walter Doty, Northumberland.
 1863—John W. Eddy, Saratoga Springs.
 1864—Austin L. Reynolds, Moreau, and Morgan L. Finch, Clifton Park.
 1867—Alfred Angell, Corinth.
 1869—Seymour Gilbert, Saratoga Springs.

CLERKS OF EXCISE BOARDS.

1857—William B. Harris, Stillwater.
 1859—Jerome B. Buckbee, Saratoga Springs.
 1863—John A. Corey, Saratoga Springs.

SUPERINTENDENTS OF HIGHWAYS. (ACT OF 1797.)

1797—Samuel Clark, Stillwater, Henry Walton, Ballston, and John Bleecker, Stillwater.
 1799—John Ten Broeck, Halfmoon; Hugh Peobles, Halfmoon.

COMMISSIONERS OF TAXES. (ACT OF 1799.)

James Gordon, Ballston; Henry Walton, Ballston; Hugh Peobles, Halfmoon.

COUNTY TREASURERS.

1791—Guert Van Schoonhoven, Waterford.
 1792—Samuel Clark, Stillwater.
 1794—Caleb Benedict, Ballston.
 1796—Elisha Powell, Milton.
 1798—Robert Leonard, Milton.
 1800—Jonahan Kellogg, Ballston.
 1805—Edward Watrous, Ballston.
 1810—Archy Kasson, Ballston.
 1815—Azariah W. Odell, Ballston.
 1822—Edward Watrous, Ballston.
 1831—George Thompson, Ballston.
 1844—Arnold Harris, Ballston.
 1847—Edward W. Lee, Milton.
 1849—Arnold Harris, Ballston.
 1855—Orville D. Vaughn, Milton.
 1861—Henry A. Mann, Milton.
 1876—James H. Wright, Saratoga Springs.

SUPERINTENDENTS OF THE POOR.

1827—Aaron Morehouse, Alpheus Goodrich, Jesse Robertson, Hugh Hawkins, Rockwell Putnam, Earl Stimson, David Benedict, David Guernsey and Jonathan Lapham.

1827—Hugh Hawkins, Elisha Powell, Earl Stimson, David Guernsey and Christopher Earl (from Nov. 16)

1828—Hugh Hawkins, Elisha Powell, Christopher Earl, Moses Williams and Alpheus Goodrich.

1831—Elisha Powell, Hugh Hawkins, Aaron Morehouse and Christopher Earl.

1832—Elisha Powell, Hugh Hawkins and Aaron Morehouse.

1833—Elisha Powell, Aaron Morehouse and Samuel Smith.

1835—Elisha Powell, Lebbeus Booth and William Hawkins.

1842—William Hawkins, John Wait and Edward W. Lee.

1844—Lebbeus Booth, Abraham Middlebrook and Jas. H. Speir.

1847—John Kelly, John Wait and William W. Arnold.

1848—Calvin Wheeler, Abraham Middlebrook and William A. Mundell.

1849—Robert Gardner.

1850—Calvin Wheeler.

1851—Abraham Middlebrook.

1852—Robert Gardner.

1853—Samuel Rue.

1854—Abraham Middlebrook.

1855—Robert Gardner.

1856—Samuel Rue.

1857—Harmon G. Sweeney.

1858—Robert Gardner.

1859—Henry Wright.

1860—David Rowley.

1861—Richard Hewitt.

1862—Henry Wright.

1863—Henry Holmes.

1864—David Rowley.

1865—Alexander Davidson.

1866—Henry Holmes and James Tripp (*vice* Rowley, deceased).

1867—James Tripp.

1868—Alexander Davidson.

1869—Thomas Sweet.

1870—James Tripp.

1871—Zimri Lawrence.

1872—Alexander Davidson.

1873—James Tripp.

1874—Zimri Lawrence.

1875—George W. King.

1876—James Tripp.

[NOTE—Prior to 1832, they were chosen by the supervisors; from 1832 to 1842 they were appointed by the Court of Common

Pleas and the supervisors; from 1842 to 1848 they were again chosen by the supervisors, and since then they have been elected by the people.]

KEEPERS OF THE COUNTY POORHOUSE, ESTABLISHED IN 1827.

Benjamin Cowles, Daniel A. Collamer, Sylvester Blood, Increase Hoyt, Henry Wright, Charles R. Lewis, William W. Hunt, John J. Gilbert and George D. Story.

LOAN OFFICERS (LOAN OF 1792).

1792—Guert Van Schoonoven, Halfmoon.

1794—Cornelius Vandenburg, Stillwater.

1798—Elisha Powell, Milton.

[NOTE.—The office was abolished in 1832, and books and papers transferred to the Commissioners of Loans.]

COMMISSIONERS OF LOANS (LOAN OF 1808.

1808—John W. Taylor, Ballston; John Cramer, Waterford.

1829—Gideon M. Davison, Sar. Spgs.; Joshua Bloore, Waterford.

1832—George W. Kirtland, Waterford (*vice* Bloore).

1840—Daniel Morgan, Saratoga; DeWitt C. Austin, Moreau.

1843—Cyrus Perry, Wilton; George G. Scott, Milton.

[NOTE.—The office was abolished in 1850, and the books and papers transferred to the United States Deposit Fund.

COMMISSIONERS OF THE UNITED STATES FUND LOAN (LOAN OF 1837).

1837—Isaac Frink, Wilton; Joshua Bloore, Waterford.

1840—John House, Waterford; Lebbeus Booth, Ballston.

1843—John Cramer, 2d., Waterford; Alvah Dake, Greenfield.

1845—Wm. I. Gilchrist, Charlton; Jas V. Bradshaw, Halfmoon.

1848—Calvin W. Dake, Greenfield; George B. Powell, Milton.

1855—Andrew Watrous, Sar. Springs; Albert A. Moor, Milton.

1861—Seymour Gilbert, Sar. Springs; Nathaniel Mann, Milton.

1865—Joshua Swan, Milton; Calvin W. Dake, Greenfield.

1869—Isaac Grinnell, Milton; Daniel C. Coy, Greenfield.

1873—Warren Dake, Greenfield; Alonzo Russell, Saratoga.

DEPUTY SUPERINTENDENTS OF COMMON SCHOOLS. (ACT OF 1841.)

1841—Alanson Smith, Saratoga Springs.

1843—Seabury Allen, Galway.

[Note.—They were appointed by the supervisors, and the office was abolished in 1847.]

SCHOOL COMMISSIONERS. (ACT OF 1856.)

1856—1st district, Samuel Tompkins, Stillwater. 2d district, Anson M. Boyce, Wilton.

1858—1st district, Charles D. Seeley, Milton. 2d district, Anson M. Boyce, Wilton.

1861—1st district, Seymour Chase, Milton. 2d district, Walton W. French,* Saratoga Springs; Anson M. Boyce†, Wilton.

1864—1st district, Thomas McKindley, Charlton. 2d district, Henry Wilcox, jr. Saratoga Springs.

1867—1st district, Neil Gilmour, Milton. 2d district, Henry Wilcox, jr., Saratoga Springs.

1870—1st district, Seth Whalen, Milton. 2d district, Oscar F. Stiles, Saratoga Springs.

1873—1st district, Neil Gilmour‡, Milton; Henry L. Grose§, Milton. 2d district, Oscar F. Stiles, Saratoga Springs.

1876—1st district, Nelson L. Roe, Ballston. 2d district, John W. Shurter, Moreau.

DELEGATES TO STATE CONSTITUTIONAL CONVENTIONS.

1788—Dirck Swart, Stillwater.

1801—Adam Comstock, Greenfield; Samuel Lewis, Northumberland; Beriah Palmer, Ballston; John Thompson, Stillwater; Daniel L. Van Antwerp, Stillwater.

1821—Salmon Child, Greenfield; John Cramer, Waterford; Samuel Young, Ballston; Jeremy Rockwell, Hadley.

1846—John K. Porter, Waterford; James M. Cook, Milton.

1867—Alembert Pond, Saratoga Springs.

STATE SENATORS.

Anthony Van Schaick of Halfmoon, in 1779-80

Leonard Ganzevoort of Saratoga, on 1791-2 3.

Jacobus Van Schoonhoven of Halfmoon, from 1794 to 1805.

James Gordon of Ballston, from 1796 to 1804.

Adam Comstock of Hadley, from 1806 to 1809.

John Stearns of Halfmoon, from 1810 to 1813.

Samuel Stewart of Halfmoon, from 1814 to 1817.

Samuel Young of Ballston, from 1818 to 1821.

John L. Viele, Waterford, in 1822; and again in 1826-7-8-9.

John Cramer of Waterford, in 1823-4-5.

Isaac Gere of Galway, in 1830-1-2-3.

Samuel Young of Ballston, from 1835 to 1840; and again in 1846-7.

John W. Taylor of Ballston in 1841-2.

James M. Cook of Milton, from 1841 to 1851; and again in 1864-5.

*Resigned to enter the army, 1862.

†Appointed *vice* French resigned.

‡Elected State Superintendent 1874.

§Appointed and then elected to fill the unexpired term of Neil Gilmour, resigned.

George G. Scott of Milton, in 1858-9.

Isaiah Blood of Milton, in 1860-1; and again in 1870*.

John Willard of Saratoga Springs, in 1862*.

MEMBERS OF ASSEMBLY. (CONSTITUTION OF 1777.)

1777-8-9—(Albany county) James Gordon, Ballston.

1780—James Gordon, Ballston; Jacob Fort, jr. Halfmoon; Dirck Swart, Stillwater.

1781—Dirck Swart, Stillwater; Jacob Fort, jr. Halfmoon; Geo. Palmer, Stillwater.

1782-3—Jacob Fort, jr. Halfmoon; Dirck Swart, Stillwater.

1784—James Gordon, Ballston; Dirck Swart, Stillwater; Jacob Fort, jr. Halfmoon.

1785—Dirck Swart, Stillwater; Jacob Fort, jr. Halfmoon.

1786—James Gordoo, Ballston; Jacobus Van Schoonhoven, Halfmoon.

1787-8—James Gordon, Ballston.

1789—John Thompson, Stillwater.

1789-90—James Gordon, Ballston.

1791—Jacobus Van Schoonhoven, Halfmoon; Sidney Berry, Saratoga.

1792—(Saratoga county) Sidney Berry, Saratoga; Elias Palmer, Stillwater; Andrew Mitchell, Ballston; Benj. Rosekrans, Halfmoon.

1793—Adam Comstock, Milton; John Ball, Milton; Beriah Palmer, Ballston.

1794—Adam Comstock, Greenfield; John Ball, Milton; Beriah Palmer, Ballston.

1795—Adam Comstock, Greenfield; John B. Schuyler, Saratoga; Beriah Palmer, Ballston; Jabez Davis, Charlton.

1796—Adam Comstock, Greenfield; John McClelland, Galway; Elias Palmer, Stillwater; John Bleeker, Stillwater.

1797—Adam Comstock, Greenfield; Samuel Clark, Stillwater; John Taylor, Charlton; Seth C. Baldwin, Ballston; John McClelland, Galway.

1798—Adam Comstock, Greenfield; Seth C. Baldwin, Ballston; Samuel Clark, Stillwater; Aaron Gregory, Milton; Douw I. Fonda, Stillwater.

1799—Adam Comstock, Greenfield; Samuel Clark, Stillwater; Seth C. Baldwin, Ballston; Henry Corl, jr. Charlton; James Warren, Galway.

1800—Adam Comstock, Greenfield; Samuel Clark, Stillwater; Daniel Bull, Saratoga; James Warren, Galway; Edward A. Watrous, Milton.

1801—Adam Comstock, Greenfield; Daniel Bull, Saratoga; Henry Corl, jr. Charlton; James Warren, Galway; James Merrill, Ballston.

*Died in office.

1802—Adam Comstock, Hadley ; Samuel Clark, Malta ; Gideon Goodrich, Milton ; Othniel Looker, Galway.

1803—Adam Comstock Hadley ; John Hunter, Stillwater ; Samuel Lewis, Northumberland ; Othniel Looker, Galway.

1804—Adam Comstock, Hadley ; John Hunter, Stillwater ; Samuel Lewis, Northumberland ; Othniel Looker, Galway.

1805—Samuel Clark, Malta ; Asahel Porter, Greenfield ; William Carpenter, Providence ; David Rogers, Ballston.

1806—Jesse Mott, Saratoga ; Asahel Porter, Greenfield ; John Cramer, Halfmoon ; John McClelland, Galway.

1807—Jesse Motr, Saratoga ; Gideon Goodrich, Milton ; Chauncey Belding, Charlton ; David Rogers, Ballston.

1808—John McClelland, Galway ; Chauncey Belding, Charlton ; Salmon Child, Greenfield ; Jesse Mott, Saratoga.

1809—Salmon Child, Greenfield ; David Rogers, Ballston ; Nehemiah Cande, Galway ; Daniel L. Van Antwerp, Stillwater.

1810—Samuel Lewis, Northumberland ; Joel Lee, Milton ; Calvin Wheeler, Providence ; Daniel L. Van Antwerp, Stillwater ;

1811—John Cramer, Halfmoon ; Jesse Mott, Saratoga ; Jeremy Rockwell, Hadley ; David Rogers, Ballston.

1812—John W. Taylor, Hadley ; Joel Keeler, Milton ; Zebulon Mott, Halfmoon ; Avery Starkweather, Galway.

1813—John W. Taylor, Hadley ; John Prior, Greenfield ; Caleb Holmes, Charlton ; Calvin Wheeler, Providence.

1814—Samuel Young, Ballston ; Nicholas W. Angle, Milton ; Avery Starkweather, Galway ; John Dunning, Malta.

1815—Samuel Young, Ballston ; Richard Ketchum, Stillwater ; Howell Gardner, Greenfield ; Benjamin Cowles, Hadley.

1816—Asa C. Barney, Greenfield ; George Cramer, Saratoga ; Isaac Gere, Galway ; William Hamilton, Halfmoon.

1817—Harmon Ganzevoort, Northumberland ; John Hamilton, Edinburgh ; Zebulon Mott, Halfmoon ; John Pettit, Greenfield.

1818—Elisha Powell, Milton ; John Gibson, Ballston ; Earl Stimson, Galway ; Staats Morris, Stillwater.

1819—Joel Keeler, Milton ; John Rogers, jr., Charlton ; William Hamilton, Orange ; Abner Carpenter, Malta.

1820—Billy J. Clark, Moreau ; Elisha Powell, Milton ; Abramam Moe, Halfmoon ; Jonathan Delano, jr., Providence.

1821—Zebulon Mott, Halfmoon ; John Rogers, jr. Charlton ; Harmon Ganzevoort, Northumberland ; John House, Waterford.

1822—John Prior, Greenfield, John Gilchrist, Charlton ; Conrad Cramer, Northumberland ; Thomas Cellamer, Malta.

1823—(Constitution of 1821.) Valentine Campbell, Stillwater ; Samuel Belding, Charlton ; John Pettit, Greenfield.

1824—Isaac Gere, Galway ; Jeremy Rockwell, Hadley ; James McCrea, Ballston.

1825—Alpheus Goodrich, Milton ; Philip Schuyler, Saratoga ; Nicholas B. Doe, Waterford.

1826—Samuel Young, Ballston ; Thomas Dibble, Corinth ; David Benedict, Stillwater.

1827—Howell Gardner, Greenfield; John Gilchrist, Charlton; Nicholas Emigh, Jr., Halfmoon.

1828—Alpheus Goodrich, Milton; Thomas Howland, Northumberland; Eli M. Todd, Waterford.

1829—Gilbert Waring, Saratoga Springs; Joshua Mandeville, Waterford; Calvin Wheeler Providence.

1830—William Shepherd*, Clifton Park; Seth Perry, Wilton; Samuel Stewart, Waterford.

1831—Howell Gardner, Greenfield; John Gilchrist, Charlton; Oran G. Otis, Milton.

1832—Oran G. Otis, Milton; James Brisbin, jr., Saratoga; Ebenezer Couch, Galway.

1833—George Reynolds, Moreau; Ephraim Stevens, Clifton Park; Ebenezer Couch, Galway.

1834—Eli M. Todd, Waterford; Thomas J. Marvin, Saratoga Springs; Solomon Ellithorp, Edinburgh.

1835—Asahel Philo, Halfmoon; William B. Van Benthuisen, Saratoga; Eli Beecher, Edinburgh.

1836—Joel Lee, Milton; David Benedict, Stillwater; Samuel Stimson, Day.

1837—Seabury Allen, Providence; Halsey Rogers, Moreau.

1838—Calvin Wheeler, Providence; Walter Van Veghten, Saratoga.

1839—Calvin Wheeler, Providence; John Stewart, Waterford.

1840—John Stewart, Waterford; David Stewart, Hadley.

1841—Abijah Peck, jr., Clifton Park; Jesse H. Mead, Galway.

1842—John Cramer, Waterford; Halsey Rogers, Moreau.

1843—Azariah E. Stimson, Galway; Lyndes Emerson, Wilton.

1844—James Groom, Clifton Park; Ezra Wilson, Greenfield.

1845—William Wilcox, Saratoga; Edward Edwards, Corinth.

1846—James M. Marvin, Saratoga Springs; Chauncey Boughton, Halfmoon.

1847—Thomas C. Morgan, Waterford; Joseph Daniels, Greenfield.

1848—(Constitution of 1846) 1st district, Cady Hollister, Ballston; 2d district, George Payn, Moreau.

1849—1st district, Roscius R. Kennedy, Clifton Park; 2d district, William W. Rockwell, Hadley.

1850—1st district, James Noxou, Halfmoon; 2d district, Frederick J. Wing, Greenfield.

1851—1st district, Abraham Leggett, Stillwater; 2d district, John L. Perry, Saratoga Springs.

1852—1st district, Isaiah Blood, Milton; 2d district, Alexander H. Palmer, Hadley.

1853—1st district, William Cary, Halfmoon; 2d district, Henry Holmes, Saratoga.

1854—1st district, George W. Neilson, Stillwater; 2d district,

*Oldest surviving member of assembly from Saratoga county, both in years and date of service.

Joseph Baucus, Northumberland.

1855—1st district, Cornelius Schuyler, Ballston; 2d district, John Terhune, Northumberland.

1856—1st district, George G. Scott, Milton; 2d district, Joseph Baucus, Northumberland.

1857—1st district, George G. Scott, Milton; 2d district, Samuel J. Mott, Saratoga.

1858—1st district, Chauncey Boughton, Halfmoon; 2d district, Tabor B. Reynolds, Wilton.

1859—1st district, Chauncey Boughton, Halfmoon; 2d district, George S. Batcheller, Edinburgh.

1860—1st district, John Fulton, Waterford; 2d district, Judiah Ellsworth, Saratoga Springs.

1861—1st district, John Fulton, Waterford; 2d district, James Sumner, jr., Providence.

1862—1st district, John Fulton, Waterford; 2d district, Nathaniel M. Houghton, Corinth.

1863—1st district, Ira Brockett, Galway; 2d district, N. M. Houghton, Corinth.

1864—1st district, Ira Brocket, Galway; 2d district, Edward Edwards, Corinth.

1865—1st district, George W. Chapman, Milton; 2d district, Edward Edwards, Corinth.

1866—1st district, Truman G. Younglove, Halfmoon; 2d district, Austin L. Reynolds, Moreau.

1867—1st district, Truman G. Younglove, Halfmoon; 2d district, Austin L. Reynolds, Moreau.

1868—1st district, Truman G. Younglove, Halfmoon; 2d district, Alenbert Pond, Saratoga Springs.

1869—1st district, Truman G. Younglove, Halfmoon; 2d district, DeWitt C. Hoyt, Greenfield.

1870—1st district, Isaiah Fuller, Galway; 2d district, Seymour Ainsworth, Saratoga Springs.

1871—1st district, Isaiah Fuller, Galway; 2d district, Joseph W. Hill, Saratoga Springs.

1872—1st district, George West, Milton; 2d district, N. M. Houghton, Corinth.

1873—1st district, George West, Milton; 2d district, George S. Batcheller, Saratoga Springs.

1874—1st district, George West, Milton; 2d district, George S. Batcheller, Saratoga Springs.

1875—1st district, George West, Milton; 2d district, N. M. Houghton, Corinth.

1876—1st district, George West, Milton; 2d district, Isaac Noyes, jr. Edinburgh.

Samuel Young was speaker in 1815 and 1826, and Truman G. Younglove was speaker in 1869.

REPRESENTATIVES IN CONGRESS FROM SARATOGA COUNTY.

- James Gordon of Ballston, from 1791 to 1795.
 John Thompson of Stillwater, from 1799 to 1801; and again from 1807 to 1811.
 Beriah Palmer of Ballston, from 1803 to 1805.
 John W. Taylor of Ballston, from 1813 to 1833.
 John Cramer of Waterford, from 1833 to 1837.
 Anson Brown of Milton, from 1839 till his death in 1840.
 Nicholas B. Doe of Waterford, 1840-1
 Chessel den Ellis of Waterford, from 1843 to 1845.
 Hugh White of Waterford, from 1845 to 1851.
 James B. McKean of Saratoga Springs, from 1859 to 1863.
 James M. Marvin of Saratoga Springs, from 1863 to 1871.
 Henry H. Hathorn of Saratoga Springs, from 1873 to 1877.

PRESIDENTIAL ELECTORS FROM SARATOGA COUNTY.

- 1792—Samuel Clark, voted for Washington.
 1800—Robert Ellis, voted for Jefferson.
 1804—Adam Comstock and John Cramer, voted for Jefferson.
 1812—George Palmer, jr. voted for DeWitt Clinton.
 1816—Samuel Lewis, voted for Monroe.
 1820—Howell Gardner, voted for Monroe.
 1824—Nathan Thompson, voted for Henry Clay.
 1828—Salmon Child, voted for John Quincy Adams.
 1836—Harman Ganzevoort, voted for Van Buren.
 1840—Earl Stimson, voted for Harrison.
 1848—Samuel Freeman, voted for Taylor.
 1856—John C. Hulbert, voted for Fremont.

STATE OFFICERS RESIDING IN SARATOGA COUNTY.

- Reuben H. Walworth, Chancellor, 1828 to 1847.
 Esak Cowen, Judge of Supreme Court, 1836 to 1844.
 John Willard, Justice of Supreme Court from 1847 to 1853.
 Augustus Bockes, Justice of the Supreme Court 1855, and again from 1860 to the present time.
 Samuel Young, Secretary of State, 1842-5.
 James M. Cook, Comptroller, 1854 6.
 James M. Cook, Treasurer, 1852.
 Samuel Young, Canal Commissioner, 1816 to 1842
 George W. Chapman, Canal Commissioner, 1870-2.
 James M. Cook, Superintendent of the Banking Department, 1856 62.
 Samuel Young, *ex-officio* Superintendent of Common Schools, 1842-5.
 Neil Gilmour, Superintendent of Public Instruction, 1874—.

UNITED STATES OFFICERS NOW RESIDING IN SARATOGA COUNTY.

Nathanicl B. Sylvester, Commissioner, Saratoga Springs.
Elias H. Peters, Register in Bankruptcy, Saratoga Springs.
Norman S. May, Deputy Marshal, Saratoga Springs.

DATE OF ERECTION OF TOWNS.

Ballston, as Ball's Town, a district of Albany county, April 1, 1775; as a town, March 7, 1788. Charlton in 1792. Clifton Park, as Clifton, in 1828, and changed to its present name the next year. Corinth in 1818. Day, as Concord, in 1819, and changed to its present name in 1830. Edinburgh, as Northfield, in 1801; name changed in 1808. Galway (originally Galloway, from the shire in Scotland, and Hibernicized by an error in the legislature made by an Emerald islander clerk) in 1792. Greenfield in 1793. Hadley in 1801. Half Moon, as a district of Albany county, March 24, 1772, and as a town, March 7, 1788; changed to Orange in 1816, and returned to Halfmoon in 1820. Malta in 1802. Milton in 1792. Moreau in 1805. Northumberland in 1798. Providence in 1796. Saratoga, as a district of Albany county, March 24, 1772, and as a town, March 7, 1788. Saratoga Springs in 1819. Stillwater, March 7, 1788. Waterford in 1816. Wilton in 1818.

